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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 171

THE UNITED STATES OF AMERICA,
APPELLANT,

vs.

JOE HARRISON and PHIL C. KATZ, Public Administrator of the City and County of San Francisco.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED JULY 6, 1950.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 171

THE UNITED STATES OF AMERICA,
APPELLANT,

vs.

JOE BURNISON and PHIL C. KATZ, Public Administrator of the City and County of San Francisco.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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1 In the Supreme Court of the State of California

No. 102412

In the Estate of GUST BURNISON
also called GUSTAV BURNISON.
JOE BURNISON,
APPELLANT,
VS.
PHIL C. KATZ, as Public Administrator of the
City and County of San Francisco, and
THE UNITED STATES OF AMERICA,
RESPONDENTS.

Clerk's Transcript on Appeal

From an Order of the Superior Court of the State of California, in and for the City and County of San Francisco.

2

102412

Vol. 1143 Page 107
June 30, 1932
205—3rd St.,
San Francisco, California

This is my last Will & Wish
That I give all I own & possess to The United States goverenment U. S. A.
The benefreiory shall be excutor
My body shall be cremated after death

Signed GUST BURNISON
Approved July 27, 1944

3 In the Superior Court of the State of California
in and for the City and County of San Francisco,

No. 102412

Department No. 9

In the Matter of the Estate
of
GUST BURNISON, also called
GUSTAV BURNISON, Deceased.

(File Endorsement Omitted)

Petition for Probate of Will and for Letters of Administration with the Will Annexed—Filed March 11, 1946

To the Honorable, the Superior Court of the State of California in and for the City and County of San Francisco:

The petition of Phil C. Katz, as Public Administrator of the City and County of San Francisco, State of California, respectfully shows to the Court:

That GUST BURNISON, also called GUSTAV BURNISON, died on or about the 23rd day of February, 1946, at the City and County of San Francisco, State of California, and was at the date of his death, your petitioner is informed and believes and therefore avers, a resident of said City and County of San Francisco, and left estate in said City and County of San Francisco, State of California.

4 That the probable value and character of the estate of said deceased, as far as known to your petitioner, are as follows: Personal property, value unknown.

That said deceased left a document, filed herewith, said document bearing date the 30th day of June, 1932, purporting to be the last will and testament of said deceased, which said document, your petitioner is informed and believes and therefore avers, was entirely written, dated and signed by said decedent.

That at the date of the execution of said last will and testament said decedent was over the age of twenty-one years and was, your petitioner is informed and believes and therefore avers, of sound mind and not acting under any undue influence, fraud, or misrepresentation, and was in all respects competent to devise and bequeath all of his estate.

That the names, ages and places of residence of the heirs at law and next of kin of said deceased so far as known to your petitioner, are MRS. DENA IRVINE, sister, Keyboard, Washington, and the following brothers, JOHN B. BURNISON, Marquette, Kansas, JOSEPH BURNISON, Marquette, Kansas, and JULIUS BURNISON, McPherson, Kansas, all of legal age, and certain children of predeceased brothers and sisters, whose names, ages and places of residence are unknown to your petitioner.

That the legatee named in said will is THE UNITED STATES GOVERNMENT, U. S. A.

That in and by said last will and testament of said
5 decedent he named the beneficiary therein, i. e., The United States Government as Executor thereof; that said United States Government is not qualified to act as Executor;

That your petitioner is the duly appointed, qualified and acting Public Administrator of the City and County of San Francisco, State of California, and as such he is entitled to letters of administration with the will annexed on the estate of said deceased.

WHEREFORE, your petitioner prays that a time and place be fixed for the hearing of this petition, and that on said

hearing said document be admitted to probate as the last will and testament of said deceased, and that your petitioner be appointed administrator with the will annexed of the estate of said deceased, and that letters of administration with the will annexed on the estate of said deceased issue to your petitioner as Public Administrator, as aforesaid.

Dated: March 5, 1946.

PHIL C. KATZ /s
Petitioner

HENRY F. BOYEN /s
Attorney for Petitioner

June 30, 1932
205—3rd St.,
San Francisco, California

This is my last Will & Wish
That I give all I own & Possess to The United States goverenment U. S. A. The benefreiory shall be excutor.
6 My body shall be cremated after death

Signed GUST BURNISON
Approved July 27, 1944

In Superior Court of City and County of San Francisco

(File Endorsement Omitted)

Order Admitting Will to Probate and for Letters of Administration with the Will Annexed—Filed May 7, 1946

Now comes the petitioner, PHIL C. KATZ, as Public Administrator of the City and County of San Francisco, State of California, by HENRY F. BOYEN, ESQ., his attorney, and proves to the satisfaction of the Court that the time for hearing the petition for the probate of the will of decedent, and for letters of administration with the will annexed, filed herein on the 11th day of March, 1946, was by the Clerk duly set for the 2nd day of April, 1946, and regularly continued to the 7th day of May, 1946, and that notice of said hearing has been given as required by law; and no person appearing to contest said petition the Court proceeds to hear the evidence, and thereupon finds that all of the allegations of said petition are true and that said petition ought to be granted.

IT IS THEREFORE ORDERED AND ADJUDGED by the Court that said GUST BURNISON, also called GUSTAV BURNISON, died on or about the 23rd day of February, 1946, leaving estate in the State of California; that he was then a resident of San Francisco, California; that the instrument in writing, hereinbefore filed, purporting to be his last will and testament, and so alleged to be in said petition, be admitted to probate as the last will of said deceased; that said petitioner, PHIL C. KATZ, as Public Administrator of the City and County of San Francisco, State of California, be appointed administrator with the will annexed of the estate of said deceased, and that letters of administration with the will annexed issue to him.

DONE IN OPEN COURT this 7th day of May, 1946.

T. I. FITZPATRICK /s
Judge of the Superior Court

In Superior Court of City and County of San Francisco

(File Endorsement Omitted)

Letters of Administration with the Will Annexed—Filed May 7, 1946

State of California
City and County of San Francisco } ss.:

The last will and testament of GUST BURNISON, also called GUSTAV BURNISON, deceased, ~~having been~~ proved and recorded in the Superior Court of the State of California, in and for the City and County of San Francisco, PHIL C. KATZ, as Public Administrator of the City and County of San Francisco, State of California, is hereby appointed administrator with the will annexed of the estate of said deceased.

WITNESS, H. A. VAN DER ZEE, Clerk of the Superior Court of the State of California, in and for the City and County of San Francisco, with the seal of said Court affixed this 7th day of May, 1946.

By Order of Court
H. A. VAN DER ZEE
Clerk

(Seal)

By M. J. FAHEY
Deputy Clerk

In Superior Court of City and County of San Francisco

(File Endorsement Omitted)

Oath of Appraiser—Filed July 27, 1946

State of California)
City and County of San Francisco) ss.:

R. F. MOGAN, Appraiser of the estate of GUST BURNISON, also called GUSTAV BURNISON, deceased, being duly sworn, says: That he will truly, honestly and impartially appraise the property of said estate, which shall be exhibited to him, according to the best of his knowledge and ability.

R. F. MOGAN /s

Subscribed and sworn to before me this 12th day of June, 1946.

(Seal)

FRANK A. FLYNN
Court Commissioner in and for the
9 City and County of San Francisco
State of California

State of California)
City and County of San Francisco) ss.:

PHIL C. KATZ, Administrator with the Will Annexed of the estate of GUST BURNISON, also called GUSTAV BURNISON, deceased, being duly sworn, says: That the annexed inventory contains a true statement of all the estate of said deceased which has come to his knowledge and possession, and particularly of all just claims of said decedent against affiant.

PHIL C. KATZ /s

Subscribed and sworn to before me this 7th day of June, 1946.

(Seal)

ANNE F. SWIFT
Notary Public in and for the
City and County of San Francisco
State of California

Estate of GUST BURNISON, also called GUSTAV BURNISON, deceased.

To R. F. MOGAN, Appraiser, Dr.

To compensation for services in appraising said estate, item as follows: $22.65; Notary $1.00, Total, $23.65.

State of California
City and County of San Francisco } ss.:

R. F. MOGAN, the Appraiser above named, being duly sworn, says: That the foregoing bill of items is correct and just and that the services have been fully rendered as therein set forth.

R. F. MOGAN /s

Subscribed and sworn to before me this 12th day of June, 1946.

FRANK A. FLYNN
(Seal) Court Commissioner in and for the
City and County of San Francisco
State of California

Inventory and Appraisement

Moneys belonging to the decedent which have come to the hands of the Administrator:

Moneys received from:	
Don-Ra-Dae Hospital:	
Cash from effects	$ 3.27
Decedent's cash	42.15
American Business Shares, Inc. Div. 48 2/20/46	3.80
The Morris Plan Company of California Investment account (savings)	700.00
Wells Fargo Bank and Union Trust Co., savings acct.	5007.98

PERSONAL PROPERTY (Other than Cash)

Item

(1) 25 shares of Common capital stock of General Motors Corporation (Delaware corporation) Par value $10 per share. Certificate No. C 8720, dated January 12, 1929.

11 Appraised at $1887.50

(2) Receipt No. OF 12174, dated December 27, 1928, for 10 Ordinary Registered Shares of Ford Motor Company, Ltd. Par Value One Pound Sterling. Guaranty Trust Company of New York, Depositary.

Appraised at ..... $ 76.25

(3) 176 shares of Class A stock of Hearst Consolidated Publications, Inc. (Delaware corporation). Par value $25 each.

Certificate No.	No. of Shares	Dated
SF 2351	100	July 2, 1934
SF 066400	1	July 27, 1934
SF 069390	2	Sept. 17, 1934
SF 075368	1	Dec. 15, 1934
SF 091482	12	July 1, 1935
SF 0110021	20	Jan. 24, 1936
SF 0121190	20	March 22, 1937
SF 0123344	20	October 5, 1937

Appraised at.....$5500.00

(4) 5 shares capital stock of 300 Adams Building, Inc. (Illinois Corporation). Without par value. Certificate No. 160, dated May 1, 1935

Appraised at.....$ 500.00

(5) 60 shares of the capital stock of The Long-Bell Lumber Company, Kansas City, Mo.
12 (Missouri corporation, 1884) Par $5.00 each, Certificate No. 2749, dated August 2, 1943.

Appraised at.....$ 960.60

(6) 95 shares capital stock of American Business shares, Inc. (Delaware corporation 1932). Par value $1.00 each. Certificate No. 779991, dated Jan. 29, 1945.

Appraised at.....$ 456.00

(7) 30 shares capital stock of Irving Trust Company. (New York Corporation). Par value $10 each. Certificate No. AO73087, dated October 28, 1937.

Appraised at.....$ 573.75

(8) 430 shares capital stock of Perpetual Royalty Income Company. (Oklahoma corporation) Chickasha, Okla. Par value $1.00 each. Certificate No. 2868, dated January 10, 1920.

Appraised at.....$ Nil

(9) 95 shares preferred stock of C & C Developing Company Syndicate. (Delaware corporation). Par value $1.00 each. Certificate No. 1723, dated Dec. 29, 1924.

Appraised at.....$ 1.00

(10) 6 shares capital stock of American
13 Eagle Oil Company. A trust Estate, Kansas City, Mo., 1922. Par value $250.00 each. Trustees Certificates

Certificate No.	No. of Shares	Dated
13	1	November 4, 1924
24	1	February 24, 1925
51	1	July 7, 1925
61	1	October 5, 1925
93	2	September 1, 1926

Appraised at.....$ Nil

(11) 500 shares capital stock of The Lucky Tiger—Combination Gold Mining Co. (Arizona corporation). Par value $1.00 per share.

Certificate No.	No. of Shares	Dated
22355	100	Sept. 27, 1924
24875	100	May 8, 1928
26383	100	August 25, 1930
26384	100	August 26, 1930
26387	100	Sept. 5, 1930

Appraised at.....$ 875.00

(12) 1 $1000 United States Savings Bond. Series G. Issued as of December 1, 1942; due 12 years from date. (Issue price $1000). Certificate No. M 1 170 666 G

Appraised at.....$ 951.00

14 (13) 3 $1000 United States Savings Bonds. Series G. Issued as of July 1, 1943; due 12 years from date. (Issue price $1000 each). Nos. M 1 588 799 G
M 1 588 998 G
M 1 588 999 G

Appraised at.....$2868.00

(14) 1 $500 United States Savings Bond. Series G. Issued as of July 1, 1941; due 12 years from date. (Issue price $500). No. D-3018 G

Appraised at.....$ 500.00

(15) 1 $500 United States Savings Bond. Series G. Issued as of July 1, 1942; due 12 years from date. (Issue price $500). No. D 213 846 G

Appraised at.....$ 500.00

(16) 2 $100 United States Savings Bonds. Series G. Issued as of May 1, 1941; due 12 years after date. (Issue price $100 each) Nos. C 647 G; C 648 G

Appraised at.....$ 200.00

(17) 1 $500 3¾% External Dollar Bond of 1944, Series 3, Estados Unidos de Brasil (United States of Brazil). Interest payable June
15 1 and December 1. Temporary Bond No. TD 1570

Appraised at.....$ 300.00

(18) 3 $100 3¾% External Dollar Bonds of 1944, Series 3, Estados Unidos do Brasil (United States of Brazil). Interest payable June 1 and December 1. Temporary Bond Nos. TC6021, TC6022, TC6023.

Appraised at.....$ 60.00

(19) 2 $80 3¾% External Dollar Bonds of 1944, Series 5, Estados Unidos do Brasil, (United States of Brazil). Interest payable June 1, and December 1. Temporary Bond Nos. TB6800 and TB6801

Appraised at.....$ 48.00

(20) 1 $500 Income Registered Mortgage Bond No. D 144, The Congress and Senate Company, State of Missouri. Due December 1, 1944. Interest payable December 1 and June 1. Attached to said Bond is Voting Trust Certificate No. VD 144, dated August 6, 1937, for 5 shares Series A of the Congress and Senate Company.

Appraised at.....$ 397.00

(21) 1 $500 6% Republic of Chile External Sinking Fund Gold Bond, No. D 2798, due April 1, 1960. Interest payable April 1 and
16 October 1; interest coupons attached commencing No. 20, October 1, 1936 and subsequent coupons. (Subject to the provisions of Law No. 5580 of January 31, 1935, as regulated by Decree No. 1730 of May 17, 1938 and Decree No. 37 of January 4, 1936, of the Republic of Chile and Decrees issued subsequent thereto.)

Appraised at.....$ 120.00

(22) 1 $500 6% External Sinking Fund Gold Bond, First Series, No. D 2706, Republic of Peru, Peruvian National Loan. Due December 1, 1960. Interest payable June 1 and

December 1; interest coupons attached commencing No. 9, June 1, 1932, and subsequent coupons.

Appraised at.....$ 135.00

(23) 2 $1000 Farm Mortgage Certificates, Series B, The New England Securities Company, Kansas City, Mo. Date of maturity April 1, 1928. Interest payable April and October. Bond No. 98 with coupons attached No. 9 October 1, 1927 and No. 10 April 1, 1928. Bond No. 200 with coupons attached commencing No. 4 October 1, 1927 and subsequent coupons.

17 Appraised at.....$ Nil

(24) Yellow metal watch

Appraised at.....$ 5.00

TOTAL $22,668.70

As far as can be ascertained by the administrator, with the Will Annexed, all of the property mentioned in the foregoing inventory is separate property of the decedent.

I, R. F. MOGAN, the undersigned, appraiser of the Estate of GUST BURNISON, also called GUSTAV BURNISON, deceased, hereby certify that the property in the foregoing inventory described has been exhibited to and examined by me, and I appraise each item thereof as shown by the figures set opposite that item, and the whole thereof at the sum of Twenty-two Thousand Six Hundred Sixty-eight and 70/100 Dollars, ($22,668.70).

Dated: June 21, 1946

R. F. MOGAN /s
Appraiser

In Superior Court of City and County of San Francisco

(File Endorsement Omitted)

18 *Petition for Partial Distribution—Filed Oct. 18, 1946*

To the Honorable the Superior Court of the State of California, in and for the City and County of San Francisco:

Your petitioner, JOE BURNISON, on his own behalf, as an heir at law of the above named deceased, and on behalf of JOHN W. BURNISON, GENEVA PETERSON, EDNA YOUNG, GLEN

INGEMANSON, LESLIE INGEMANSON, EARLINE FURGESON, ELSIE HUDSON, JULIUS BURNISON, ELMA SAYLOR, MILDRED BOYDSTON, LEONARD INGEMANSON, BLENDA RITCHERD, VIVIAN STWALLEY, DENA IRVINE, LINNEA TURNER and MANARD VANN, as heirs at law of said deceased, respectfully represents:

I

That GUST BURNISON, also known as GUSTAV BURNISON, died testate on or about the 23rd day of February, 1946, leaving surviving him as his heirs at law entitled to succeed to the estate of said deceased, the following named persons:

NAME	RELATIONSHIP	ADDRESS
JOHN W. BURNISON	Brother	Marquette, Kansas
JOE BURNISON	Brother	Marquette, Kansas
GENEVA PETERSON	Niece	Marquette, Kansas
EDNA YOUNG	Niece	Marquette, Kansas
GLEN INGEMANSON	Nephew	Marquette, Kansas
LESLIE INGEMANSON	Nephew	Marquette, Kansas
EARLINE FURGESON	Niece	Marquette, Kansas
ELSIE HUDSON	Niece	Marquette, Kansas
JULIUS BURNISON	Brother	McPherson, Kansas
ELMA SAYLOR	Niece	McPherson, Kansas
MILDRED BOYDSTON	Niece	McPherson, Kansas
LEONARD INGEMANSON	Nephew	Topeka, Kansas
BLENDA RITCHERD	Niece	Hutchinson, Kansas
VIVIAN STWALLEY	Niece	Ellsworth, Kansas
DENA IRVINE	Sister	Key Port, Wash.
LINNEA TURNER	Niece	Idaho Springs, Colo.
MANARD VANN	Nephew	Address unknown

That petitioner is informed and believes, and on said information and belief alleges that the persons above named are all of the heirs at law of said deceased, and that deceased left surviving him no heir or heirs at law other than the persons named herein above.

II

That on the 7th day of May, 1946, in the above entitled proceeding the will of deceased was admitted to probate and letters of administration with the will annexed were duly issued to PHIL C. KATZ, Public Administrator of the City and County of San Francisco, State of California, who ever since has been and still is the duly appointed, qualified and acting administrator with the will annexed of the estate of the above named deceased.

III

That notice to creditors of said deceased was first published May 8, 1946; that more than four (4) months has elapsed since the issuance of letters of administration with the will annexed and the first publication of notice to creditors.

20 IV

That the total value of said estate, as appears by the inventory and appraisement on file herein, is the sum of TWENTY-TWO THOUSAND SIX HUNDRED SIXTY-EIGHT AND 70/100 ($22,668.70) DOLLARS.

V

That your petitioner is informed and believes and on said information and belief alleges that the claims presented against said estate do not exceed the sum of ONE THOUSAND ($1,000.00) DOLLARS, and that all of said claims except a claim of TWO HUNDRED TEN AND 35/100 ($210.35) DOLLARS filed by the City and County of San Francisco, State of California, have been allowed and paid in full; and that the said estate is in no wise indebted except to the said City and County in the said sum of TWO HUNDRED TEN AND 35/100 ($210.35) DOLLARS, and for taxes, costs and expenses of administration.

VI

Your petitioner further alleges that the will of deceased names the "UNITED STATES GOVERNMENT, U. S. A." as the sole beneficiary; that the "UNITED STATES GOVERNMENT, U. S. A.", to-wit, the UNITED STATES OF AMERICA, is not authorized by statute or otherwise to take under a will executed in the State of California by a resident of the State of California; that the said will of deceased was executed in the State of California by deceased while he was a resident of the State of California; that the said

21 "UNITED STATES GOVERNMENT, U. S. A.", to-wit, the UNITED STATES OF AMERICA, is not a state, county, municipal corporation, or natural person capable by law of taking the property of the estate of deceased; is not an unincorporated religious, benevolent or fraternal society or association or lodge or branch thereof; is not a corporation formed for religious, scientific, literary or solely educational or hospital or sanitorium purposes, or primarily for the public preservation of forests and natural scenery, or to maintain public libraries, museums or art galleries, or for similar public purposes, within the meaning of Section 27

of the Probate Code of the State of California; that the "UNITED STATES GOVERNMENT, U. S. A.", to-wit, the UNITED STATES OF AMERICA, is not authorized to take by will under the provisions of Section 27, Probate Code of the State of California or under any other statute or law of the State of California; that said gift, devise and bequest by said will of said deceased of all of the estate of said deceased to "THE UNITED STATES GOVERNMENT, U. S. A.", to-wit, the UNITED STATES OF AMERICA, is a void gift, devise and bequest, and that the deceased died intestate as to all of his said estate, and that the heirs at law of deceased surviving him at the time of his death are entitled to succeed to the entire estate of deceased according to the laws of succession of the State of California; that the petitioner is informed and believes, and on said information and belief alleges that the following named persons are the heirs at law
22 of deceased surviving him at the time of his death, and are entitled to succeed to the entire estate of deceased in the following proportions, to-wit:

JOHN W. BURNISON, brother	one-eighth (1/8)
JOE BURNISON, brother	one-eighth (1/8)
JULIUS BURNISON, brother	one-eighth (1/8)
DENA IRVINE, sister	one-eighth (1/8)
GENEVA PETERSON (only child of Fred Burnison, predeceased brother of deceased)	one-eighth (1/8)
ELMA SAYLOR (only child of Fena Lindstrum, predeceased sister of deceased)	one-eighth (1/8)

The following named children of Hulda Ingemanson predeceased sister of deceased:

EDNA YOUNG	one fifty-sixth (1/56)
LEONARD INGEMANSON	one fifty-sixth (1/56)
BLENDA RITCHERD	one fifty-sixth (1/56)
LINNEA TURNER	one fifty-sixth (1/56)
GLEN INGEMANSON	one fifty-sixth (1/56)
LESLIE INGEMANSON	one fifty-sixth (1/56)
EARLINE FURGESON	one fifty-sixth (1/56)

The following named children of Alma Vann, predeceased sister of deceased:

ELSIE HUDSON	one thirty-second (1/32)
MILDRED BOYDSTON	one thirty-second (1/32)
VIVIAN STWALLEY	one thirty-second (1/32)
23 MANARD VANN	one thirty-second (1/32)

WHEREFORE, your petitioner prays that a time be appointed for hearing this application, and that after pro-

ceedings to that end duly had and taken, the court make an order distributing to the said heirs at law of deceased, respectively, the whole of the portion of said estate to which each heir at law is entitled, after payment of all proper claims, taxes and costs and expenses of administration; and for such other and further orders as may seem to the court to be meet and just.

JOE BURNISON /s
Petitioner

HARRY N. GROVER /s
EVERETT H. ROAN /s
Attorneys for Petitioner

Duly sworn to by Joe Burnison.
Jurat omitted in printing. (All in italics.)

24 RECEIPT OF COPY of the within petition acknowledged this 18th day of Oct., 1946.

HENRY F. BOYEN /s
Attorney for Phil C. Katz, Administrator
FRANK J. HENNESSY /s
Attorney for United States of America

In Superior Court of City and County of San Francisco
(File Endorsement Omitted)

Proof of Posting on Petition for Partial Distribution—filed Oct. 21, 1946

NOTICE IS HEREBY GIVEN THAT JOE BURNISON on his own behalf and on behalf of the other heirs of GUST BURNISON, also known as GUSTAV BURNISON, deceased, having filed in this Court his Petition for Partial Distribution, the hearing of the same has been fixed by the Clerk of said Court for November 15, 1946, at 10 o'clock A. M. of said day, at the Courtroom of Department No. 9, Probate, thereof, at the
25 City Hall, 400 Van Ness Avenue, San Francisco, State of California, and all persons interested in the said estate are notified then and there to appear and show cause, if any they have, why the said petition should not be granted. For further particulars, reference is hereby made to said petition on file in my office.

Dated: OCT. 18, 1946.

H. A. VAN DER ZEE, *Clerk*
By LUTHER DOBSON, *Deputy Clerk*

State of California
City and County of San Francisco } ss.:

J. P. WALL, being duly sworn, deposes and says: I am, and at the time of posting the above notice was, a citizen of the United States over eighteen years of age. I am not interested in the matter of the above proceeding, and in no way disqualified from testifying therein. On October 18, 1946, I posted a notice of which the above is a true copy at the City Hall in the City and County of San Francisco, being the place at which the above entitled Court is held.

J. P. WALL /s

Subscribed and sworn to before me
OCT. 18, 1946.
P. L. CLAVERE,
Deputy County Clerk.

26 In Superior Court of City and County of San Francisco

(File Endorsement Omitted)

Special Notice of Filing Petition for Partial Distribution—Filed Oct. 24, 1946

To the United States of America and Frank J. Hennessy, its attorney:

In accordance with your request therefor, dated April 2, 1946, you and each of you will please take notice, and you and each of you are hereby notified, that JOE BURNISON, on his own behalf, and on behalf of the other heirs at law of the above named deceased, filed herewith in the above entitled court his Petition for Partial Distribution in the above entitled estate.

You and each of you will please take notice, and you and each of you are hereby notified, that said Petition for Partial Distribution will be presented to the above entitled court for its consideration on Friday, the 15th day of November, 1946, at 10 o'clock A. M. of said day, or as soon thereafter as said matter can be heard, at the court room of said court, Department 9, at the City Hall, 400 Van Ness Avenue, San Francisco, State of California.

Dated: This 24th day of October, 1946.

HARRY N. GROVER /s
EVERETT H. ROAN /s

Receipt of copy of the within Notice acknowledged,
27 this 24th day of October, 1946.

FRANK J. HENNESSY /s
Attorney for the United States

In Superior Court of City and County of San Francisco

(File Endorsement Omitted)

Citation and Affidavit of Service—Filed Nov. 7, 1946.

THE PEOPLE OF THE STATE OF CALIFORNIA, to

PHIL C. KATZ, Public Administrator of the City and County of San Francisco, State of California, administrator with the will annexed of the estate of the above named deceased:

YOU ARE HEREBY cited to be and appear in our Superior Court of the State of California in and for the City and County of San Francisco, at the Court Room of Department No. 9, Probate, thereof, at the City Hall, 400 Van Ness Avenue, in said City and County of San Francisco, on November 15, 1946, at 10 o'clock A. M. of that day, then and there to show cause if any you have, why petitioner's Petition for Partial Distribution should not be granted.

BY ORDER of said Superior Court, at the City and County of San Francisco

(SEAL) Dated OCT 18, 1946

ATTEST my hand and the seal of said Court, the day and year last above written.

28

H. A. VAN DER ZEE, *Clerk*
By LUTHER DOBSON /s
Deputy Clerk.

State of California
City and County of San Francisco } ss.:

HARRY N. GROVER, being duly sworn, says that he is, and was at the time of the service of the citation herein referred to, a citizen of the United States, over the age of eighteen years; that he is not interested in the within-named matter, and is competent to be a witness upon the hearing of the within proceedings; that he served the within Citation by showing the said within original to each of the following named persons named therein and delivering a true copy thereof to each of the said persons personally, as follows:

Names of Persons Served	Place Where Served	Time of Service
PHIL KATZ, Pub. Adm., San Francisco,	San Francisco, Calif.	Oct. 31, 1946

HARRY N. GROVER /s

Subscribed and sworn to before me this 6th day of November, A. D., 1946

(SEAL) GUSTAVE RICHMAN
Notary Public in and for the City and County of San Francisco, State of California.

29 In Superior Court of City and County of San Francisco

(File Endorsement Omitted)

Objections of the United States of America to Granting Petition for Partial Distribution Filed by Joe Burnison, et al.—Filed Jan. 20, 1947

The United States of America, by Frank J. Hennessy, United States Attorney for the Northern District of California, at the direction and under the authority of the Attorney General and the Solicitor General of the United States of America, appears herein as a person interested in the above entitled estate, and hereby resists and objects to the granting of the Petition for Partial Distribution filed herein by petitioner, Joe Burnison, on his own behalf, as an alleged heir at law of the above named deceased, and on behalf of John W. Burnison, Geneva Peterson, Edna Young, Glen Ingemanson, Leslie Ingemanson, Earline Furgeson, Elsie Hudson, Julius Burnison, Elma Saylor, Mildred Boydston, Leonard Ingemanson, Blenda Ritcherd, Vivian Stwalley, Dena Irvine, Linnea Turner and Manard Vann, as alleged heirs at law of said deceased, for these reasons:

I

That no testamentary disposition whatever is made to said Joe Burnison, or to any of the above named alleged heirs at law, in the will of said deceased, admitted to probate by the above entitled Court on May 7, 1946.

30 II

That under the provisions of said will the "United States Government, U. S. A.", that is, the United States of America, is named as the sole beneficiary, and is thereby entitled to take and have distributed to it the whole of the estate of said decedent.

III

That the United States of America is a person or corporation authorized to take by will pursuant to Section 27 of the Probate Code of California.

WHEREFORE, the United States of America prays that said Petition for Partial Distribution be denied; and that

distribution of said estate be made wholly and only to the United States of America.

Dated: January 20, 1947.

THE UNITED STATES OF AMERICA
By FRANK J. HENNESSY /s
United States Attorney
R. B. McMILLAN /s
Assistant United States Attorney
Attorneys for said United States of America

31 In Superior Court of City and County of San Francisco

Order Sustaining Objections and Denying Partial Distribution Heretofore Submitted

Petition of JOE BURNISON for Partial Distribution and objections.

OBJECTIONS SUSTAINED, PETITION DENIED.

M. B. order JUN 20 1947

G. J. ROMAINE /s
Deputy County Clerk

In Superior Court of City and County of San Francisco
(File Endorsement Omitted)

Notice of Appeal From Judgment and Order Denying Petition for Partial Distribution and Sustaining Objections to said Petition—Filed June 30, 1947

To the Clerk of the above entitled Court:

YOU WILL PLEASE TAKE NOTICE, that JOE BURNISON, petitioner in the above entitled proceeding for partial distribution of the above estate, hereby appeals to the Supreme Court of the State of California from the order made in said Superior Court on the 20th day of June, 1947, denying his Petition for Partial Distribution of said estate and sustaining written Objections to the granting of said petition filed by the United States of America, and
32 from the whole thereof, which said order was entered in the Minutes of said Superior Court on the 20th day of June, 1947.

Dated: This 28th day of June, 1947

HARRY N. GROVER /s
EVERETT H. ROAN /s
Attorneys for Joe Burnison
Petitioner for Partial Distribution

In Superior Court of City and County of San Francisco

(File Endorsement Omitted)

Notice to Clerk to Prepare Transcript on Appeal—Filed July 9, 1947

To the Clerk of the above entitled Court:

YOU WILL PLEASE TAKE NOTICE, that JOE BURNISON, petitioner for partial distribution in the above entitled proceeding, has appealed to the Supreme Court of the State of California from that certain order in the above entitled court made and entered on the 20th day of June, 1947, denying petitioner's Petition for Partial Distribution and sustain Written Objections to the granting of said petition filed by the United States of America, and said petitioner hereby requests that a Clerk's Transcript including the judgment roll in said proceeding, the will of the deceased, notice of appeal, the Clerk's minutes, said judgment roll to include all of the record in such proceed-
33 ing, including letters of administration with the will annexed, all petitions, all notices and affidavits of posting notices, all citations, written objections, orders, Inventory and Appraisement, claims of creditors, and also a Reporter's Transcript of testimony offered or taken, evidence ordered or received, and all rulings, acts or statements of the Court, and also all objections and exceptions of counsel and all matters to which the same relate, be made up and prepared.

Dated: This 9th day of July, 1947.

EVERETT H. ROAN /s
HARRY N. GROVER /s
Attorneys for Petitioner

Receipt of a copy of this instrument is hereby acknowledged this 9th day of July, 1947.

FRANK J. HENNESSY /s
United States Attorney

Receipt of a copy of this instrument is hereby acknowledged this 9th day of July, 1947.

HENRY F. BOYEN /s

34 *Clerk's Certificate*

State of California }
City and County of San Francisco } ss.:

No. 102412

Notices of completion of the Clerk's Transcript on Appeal of the within action having been mailed to the attorneys representing the appellant and the respondent, and no request for correction of said transcript on appeal having been filed, and the time for said filing having expired:

Pursuant to Rule 8 (a) of the Rules on Appeal, I HEREBY CERTIFY the foregoing record, consisting of 33 pages, to be a full, true and correct transcript on appeal.

Dated this 5th day of September, 1947.

ROBERT MUNSON
County Clerk and
Clerk of the Superior Court of the
State of California, in and for the
City and County of San Francisco

By s/ LUTHER DOBSON
Deputy Clerk

35 In the Superior Court of City and
County of San Francisco

Department No. 9, Probate

HON. T. I. FITZPATRICK *Judge Presiding*

No. 102412

In the Matter of the Estate
of
GUST BURNISON,
also called
GUSTAV BURNISON,
Deceased.

Reporter's Transcript—Filed Aug. 15, 1947

April 11, 1947

APPEARANCES:

For Petitioner JOE BURNISON:

HARRY N. GROVER, Esq. and
EVERETT H. ROAN, Esq., by
HARRY N. GROVER, Esq.

For PHIL C. KATZ as Public Administrator of the City and County of San Francisco:

HENRY F. BOYEN, Esq., by
FRANK FONTES, Esq.

For the UNITED STATES OF AMERICA:

FRANK J. HENNESSY, Esq., by
ROBERT B. MCMILLAN, Esq.

36 FRIDAY, APRIL 11, 1947
11 o'clock, A. M.

Colloquy

Mr. GROVER: This matter involves a bequest to the United States Government under the will of the deceased. Mr. Roan and myself represent those heirs entitled to succeed under the laws of succession. A petition has been filed, and there has been a memorandum and objection filed on behalf of the legatee. Mr. McMillan is representing the United States Attorney's Office, and Mr. Fontes is here representing the Public Administrator, the proponent of the will.

From my conversations with Mr. McMillan and Mr. Fontes, there is no question raised insofar as the right of the named parties in the petition to succeed under the laws of succession. The sole question is whether or not the will, as it reads, is void under the provisions of Section 27 of the Probate Code. I have a memorandum of points and authorities which I would appreciate your Honor permitting me to file, and Mr. McMillan, I believe, will do the same. It is our contention—

The COURT: (Interrupting) Is this the case that Mr. McMillan was in before, and we were awaiting an Appellate Court decision from Los Angeles County? We have that under submission in another case.

Mr. MCMILLAN: Yes, a similar question is involved; that is the Estate of Hendrix, and the District Court of
37 Appeal, on January 16, 1947, decided the case, and I was told by the Clerk of the Supreme Court this morning that the time for filing a petition for rehearing has expired; the remittitur went down on March 18. I could read one page from that decision that is absolutely conclusive in this case.

The COURT: That the Government could take?

Mr. MCMILLAN: That the United States could take. In this case it was a bequest to the Veterans' Administration,

and they contended that, being an agency of the United States Government, they couldn't take under 27 Probate Code. Not only does that decision hold that the agencies may take, but under that Section that the United States Government is such a person and corporation as may take under that Section. There is no obscurity in the language whatsoever. (Reading from the case cited.)

The COURT: What position do you take?

Mr. GROVER: We are taking the position that a bequest to the United States Government, without any other named beneficiary such as the Veterans' Administration, or some purpose designated in the will for which the money is to be used, is without Section 27; that the United States Government—

The COURT: (Interrupting) Are you claiming that the issue is not the same in the case just recited?

Mr. GROVER: No, it is not; there the Veterans' Administration was involved, and the turning point of the
38 case was the Veterans' Administration.

The COURT: Do you have any cases that hold to the contrary, where this question was determined in any other manner—this question of the right of the Veterans' Administration or the Government to take under the will—which involves Section 27—which you claim are inconsistent with Mr. McMillan's contention when he is standing on this decision that came down from the Appellate Court in which he claims this contention was determined—have you any cases to the contrary?

Mr. GROVER: We have one, the Estate of Loring, decided by a court of equal dignity, and which later went to the Supreme Court, in which the question of Section 27 is not discussed because there were certain technical faults on behalf of the attorneys in handling the case in the lower court, so that they did not properly present it.

The COURT: That wouldn't have very much weight under the question that I am putting to you.

Mr. GROVER: Well, I think it would, for this reason: The Estate of Loring is decided by the District Court of Appeals, and offers this support to our contentions—

The COURT: (Interrupting) You know I have decided this question two or three times.

Mr. GROVER: I don't think you ever had one where the will read as this one does.

The COURT: The case that involved the young man
39 from Milton Harris's office—

Mr. McMillan: That is the Estate of Jennie Carroll—but the case that counsel refers to is entirely beside the point here.

(Discussion off the record.)

Mr. Grover: The application of Section 27—

Mr. McMillan: (Interrupting) May I read just one paragraph?

The Court: We have discussed this matter, and I am pretty well familiar with it, although I have not made up my mind finally—although I would say I have 98%—there may be 2% left; if you want to write a letter or memorandum in answer to Mr. McMillan, in which you claim that this decision, handed down by the District Court of Appeals, and in which there was no petition for rehearing granted, so that it would become final, that the facts are not the same, I think in letter form—you could put it in letter form, and then we will submit it.

Mr. Grover: I have a memorandum which I will file now, and I will write a letter in response to your Honor's suggestion.

(Thereupon the matter was submitted.)

40 *Certificate of Trial Judge*

State of California)
City and County of San Francisco) ss.:

I, T. I. Fitzpatrick, Judge of the Superior Court of the State of California, in and for the City and County of San Francisco, the Judge who presided at the trial of the above entitled action, do hereby certify that the foregoing reporter's transcript, pages 1 to 5, inclusive, has been properly filed, and within the proper time, and presented to me for my approval; that I have examined the same and that the same is a full, true and correct transcript of the proceedings had and testimony taken at said trial, all the instructions, acts, and statements of the Court, and all objections and exceptions of counsel, and all matters to which the same relate.

I Therefore Hereby Certify that the same is true and correct, and that the same, as hereby settled and allowed, be and become part of the Judgment Roll in said action to be considered on Appeal in lieu of any Bill of Exceptions.

Dated: San Francisco, California, this day of , 1947.

.....
Judge of the Superior Court

41 *Reporter's Certificate*

State of California
City and County of San Francisco } ss.:

I, PAUL E. SPRINGER, Official Reporter of the Superior Court of the State of California, in and for the City and County of San Francisco, qualified and acting in Department 9 thereof, do hereby certify:

That the foregoing pages, numbered 1 to 5, inclusive, constitute a full, true and correct transcript of my shorthand notes, taken as such official reporter, of the testimony offered and taken, and all rulings, acts, statements, and instructions of the Court; also all objections or exceptions of counsel, and all matters to which the same relate, in the trial in the Matter of the Estate of Gust Burnison, No. 102412, tried before Honorable T. I. FITZPATRICK, Judge, on the 11th day of April, 1947.

Dated: Sep. 5, 1947.

s/ PAUL E. SPRINGER
Official Reporter

42 In the Supreme Court of California

(File Endorsement Omitted)

48 *Statement of Question Involved*

Is a bequest to the United States of America invalid because, as contended by appellant, the United States of America is not authorized to take by will under Section 27 of the Probate Code of the State of California?

49 In the Supreme Court of California

In the Matter of the Estate of
GUST BURNISON,
also called GUSTAV BURNISON, Deceased.

JOE BURNISON,
APPELLANT,
PHIL C. KATZ, as Public Administrator of the City and County of San Francisco, and THE UNITED STATES OF AMERICA,
RESPONDENTS.

Petition of Respondent, The United States of America, for a Hearing by the Supreme Court,

After Decision by the District Court of Appeal, State of California, First Appellate District, Division Two, and Numbered Therein 1 Civil No. 13,617.

City and County of San Francisco.
Honorable T. I. Fitzpatrick, Judge.

Filed Sept. 24, 1948

50 *To the Honorable Phil S. Gibson, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:*

The respondent, United States of America, respectfully requests a hearing by this Honorable Court of the above entitled cause decided by the District Court of Appeal, First Appellate District, Division Two, on August 18, 1948; 87 A.C.A. 310; a copy of the opinion appearing in the Appendix to this Petition.

The decedent, a resident of San Francisco, left a will bequeathing all his property to "the United States Government, U.S.A." (Clerk's Tr. p. 2.) He left personal property appraised at $22,668.70 (Clerk's Tr. pp. 9, 17). His heirs at law are three brothers, one sister, and thirteen nieces and nephews, all of whom petitioned for distribution of the whole estate to themselves on the ground that "the United States of America is not authorized by statute or otherwise to take under a will" executed in California by a resident of this State (Clerk's Tr. pp. 18, 20).

The Superior Court, City and County of San Francisco, following an interpretation of the law that has heretofore been applied by the Courts in this State in numerous cases, upheld by the bequest to the United States (Clerk's Tr.

p. 31). The District Court of Appeal, reversing the order of the Superior Court, held that the United States cannot take by will under Section 27 of the Probate Code of California.

This decision is wholly unwarranted under the State law or under the Federal statutes and the practice
51 that has long prevailed. It is clearly in conflict with the decision in *Estate of Hendrix*, 77 A.C.A. 719 (District Court of Appeal, Second Appellate District), and is at variance with the interpretation heretofore followed by the Superior Courts of the State. We think this is clearly set forth in the brief of the Government in the *Estate of Hendrix*, a copy thereof being annexed to its brief in the Estate of Burnison. We submit therefore that this petition for hearing should be granted.

Statutes Involved

State statute construed by the Court is Section 27 of the Probate Code of California, which reads as follows:

> Sec. 27. Who may take by will. A testamentary disposition may be made to the state, to counties, to municipal corporations, to natural persons capable by law of taking the property, to unincorporated religious, benevolent or fraternal societies or associations or lodges or branches thereof, and to corporations formed for religious, scientific, literary, or solely educational or hospital or sanatorium purposes, or primarily for the public preservation of forests and natural scenery, or to maintain public libraries, museums or art galleries, or for similar public purposes. No other corporation can take under a will, unless expressly authorized by statute.

Federal statutes and constitutional provisions bearing upon the matter are set forth in the argument.

52

Summary of Argument

I.

The Federal Constitution and the statute creating the Treasury Department authorize the acquisition of property by will by the United States. Under applicable decisions of the Supreme Court of the United States and of the Supreme Court of California, the Federal law must be given effect.

II.

The United States is a corporation within the meaning of Section 27 of the Probate Code, and the bequest is "ex-

pressly authorized by statute," within the meaning of the words as used in Section 27—those words not contemplating exclusively an act of the legislature of California.

Furthermore, the word "State", as used in Section 27, may be interpreted as including the United States and should be given this interpretation if necessary in order to avoid an undesirable result not intended by the legislature.

If it be assumed, however, that the United States is not a "corporation", and also that it is not a "State", under Section 27, then that section is merely silent on the subject, and under applicable decisions we must look to the Federal law to determine the right of the United States to acquire the property. That law, as we have shown above, authorizes the acquisition.

53

III.

The view adopted by the Court below attributes to the State statute a discriminatory effect, and denies to the United States a right existing under the Federal Constitution and a Federal statute. Such a decision is reversible on constitutional grounds. And, under a familiar principle, these arguments are additional reasons in support of a construction of the State law as validating the bequest.

ARGUMENT

I.

THE FEDERAL LAW AUTHORIZES BEQUESTS TO THE UNITED STATES, AND THE FEDERAL LAW MUST BE READ TOGETHER WITH THE STATE LAW WHEN DETERMINING THE VALIDITY OF THIS BEQUEST.

After the adoption of the Federal Constitution questions arose regarding the power of the Federal Government to receive voluntary bequests and devises and to do other things not specifically enumerated in the Constitution. The view which has prevailed concerning bequests and devises is thus set forth in *Dickson v. United States*, 125 Mass. 311, 313:

> In England, bequests for the benefit of the country, or for the payment of the national debt, have always been held valid. * * *
>
> The property or money, when received by the United States, must doubtless be applied to public purposes authorized by the Constitution and laws. But the

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> right to receive money or property, voluntarily contributed, is not a separate power, but a capacity be-

longing to the United States as a body politic and incident to the right of sovereignty, and to which may be applied the words used by eminent judges in speaking of the implied capacity of the United States to enter into contracts. * * *

To hold that the supreme government of the country, vested by the Constitution with the power to levy and collect taxes and duties to pay the debts and provide for the common defense and general welfare of the United States, and to borrow money on the credit of the United States, and capable of making contracts and of accepting security for debts, and, in case of necessity of taking private property by the right of eminent domain, has no capacity to receive a voluntary devise or bequest, is a conclusion that nothing short of an express statute or a binding judicial decision could justify us in adopting.

The Federal statutes, like the Constitution, have not spelled out in minute detail each and every duty enjoined upon or act authorized to be performed by particular departments and agencies of the Government. Much has necessarily been left to implication.

The applicable principle is set forth in *Neilson v. Lagow, et al.*, 12 How. (U.S.) 98, 107, which upheld the authority of the Secretary of the Treasury to acquire "the legal title to land, without express legislative authority, when it is taken by way of security for a debt."

55 The Court stated in part:

It is the duty of the Secretary of the Treasury to superintend the collection of the revenue, and of the Comptroller of the Treasury to provide for the regular and punctual payment of all moneys which may be collected, and to direct prosecutions for all debts which may be due to the United States. 1 Stat. at Large, 65, 66. To deny to them the power to take security for a debt on account of the United States, according to the usual methods provided by law for that end, would deprive the government of a means of obtaining payment, often useful, and sometimes indispensably necessary. That such power exists as an incident to the general right of sovereignty, and may be exercised by the proper department if not prohibited by legislation, we consider settled by the cases of *Dugan's Ex'rs. v. United States*, 3 Wheat. 172; *United States v. Tingey*, 5 Pet. 117; *United States v. Bradley*, 10 Pet. 343; *United States v. Linn*, 15 Pet. 290.

These cases decide, that the United States being a body politic, as an incident to their general right of sovereignty, have a capacity to enter into contracts and take bonds, by way of security, in cases within the sphere of their constitutional power, and appropriate to the just exercise of those powers, through the instrumentality of the proper department, when not prohibited by law, although not required to do so by any legislative act; and we think this same power extends to and includes taking security upon property for a debt already due.

56 As stated in *Ex Parte Yarbrough*, 110 U.S. 651, 658, it is a "doctrine universally applied to all instruments of writing, that what is implied is as much a part of the instrument as what is expressed."

Among the implied powers long exercised by the Treasury Department is the acceptance of voluntary payments, both *inter vivos* and testamentary. Such contributions have flowed into the Treasury since the earliest days of the Government. Some are intended as in satisfaction of obligations; but it is not always known whether or not this is true in particular cases. In a recent case, for example, inquiries disclosed the fact that an unconditional and unexplained bequest of certain securities was intended as reimbursement to the Government for benefits obtained by the decedent through a misrepresentation. *Estate of Moore*, Circuit Court, Halifax County, Virginia.

The Congress has been well aware of this practice and of the interpretation thus placed upon the statutes creating the Treasury Department and, not only has acquiesced therein, but has by legislation evidenced unmistakable approval. A recent example is the act of April 3, 1945, c. 51, 59 Stat. 48 (31 U.S.C. 757e). This statute does not in express terms authorize Government bonds to be bequeathed to the United States, nor does any other act of Con-

57 gress.[1] However, it provides what the Treasurer

[1] Certain statutes authorizing bequests to particular agencies are broad enough to cover bequests of Government bonds. These are discussed hereinafter. A provision in the act of April 3, 1945, which should be noted in this connection, directs that the Treasurer, after redeeming the bonds and paying any gift or inheritance tax due thereon, shall deposit the balance in the Treasury "as miscellaneous receipts or as otherwise authorized by law". A bequest to the United States without limitation as to use would go into "miscellaneous receipts". A bequest to or for the use of a particular agency having a statute such as first mentioned in this footnote would go into a special fund "as * * * authorized by law".

of the United States shall do when such obligations are bequeathed to the United States. Another such example is 26 U.S.C. 812, providing for the deduction of bequests to the United States when computing Federal inheritance taxes.

Gifts and bequests to the United States without limitation as to use are, in general, deposited in "miscellaneous receipts", subject to appropriation by the Congress for the general expenses of the Government. If, however, the gift is conditional, or if the Congress desires that it be used otherwise than for general expenses, special legislation may be enacted. The following are illustrations: Act of August 10, 1846, c. 178, 9 Stat. 102, creating the Smithsonian Institution to administer the funds left to the United States under the will of James Smithson, of London. Joint Resolution of June 22, 1938, c. 595, 52 Stat. 943, authorizing the executor of the estate of the late Justice Oliver Wendell Holmes to convey the Holmes residence to the United States, and providing for a committee to make recommendations to the Congress concerning the use to be made of the money and other property bequeathed. Act of July 15, 1935, c. 381, 49 Stat. 481, providing for the disposition of certain real and personal property left to the Secretary of
58 the Navy for the benefit of the hospital fund, United States Navy, under the will of the late Lieutenant Commander Paul E. McDonnold, of Los Angeles, California.

In order to provide for the administration of gifts and bequests conditioned or intended for particular uses, and also sometimes with apparent purpose to encourage the making of such gifts and bequests, the Congress has enacted some statutes applicable to particular agencies. Thus, the act of March 3, 1865, c. 91, 13 Stat. 509, as amended by the act of January 23, 1873, c. 51, 17 Stat. 417, created a corporation, the National Home for Disabled Volunteer Soldiers, with express authority to receive donations (construed as including bequests). The powers and property of this corporation were later transferred by act of Congress to the United States Veterans' Administration. See *Estate of Hendrix*, 77 A.C.A. 719.

Another example is the act of March 3, 1925, c. 423, 43 Stat. 1107 (2 U.S.C. 154 *et seq.*) creating the Library of Congress Trust Fund Board with authority "to accept, receive, hold, and administer such gifts, bequests, or devises of property * * * as may be approved by the Board and by

the Joint Committee [of Congress] on the Library." The Librarian of Congress had always accepted gifts and bequests for the library under authority implied from, but not expressly stated in, the statute creating the library; and some gifts and bequests (e. g., books, objects of art, etc.) are still accepted under such implied authority by the librarian, not the Trust Fund Board.

59 Another form of legislation to be noted in this connection appears in 31 U.S.C. 725s, setting up certain trust funds in the Treasury and then providing for the setting up of other trust funds in analogous cases.

No express legislation appears to have resulted from any doubt of the implied authority of administrative officers to accept and administer unconditional bequests such as involved in this case. Congressional acquiescence in, and approval of, the principle that the Treasury Department has the implied authority to accept such bequests of personal property is further illustrated by the case of *United States v. Moore*, 197 Ark. 664, and the act of Congress approved May 22, 1939, c. 143, 53 Stat. 753. Thomas A. Beck and Lizzie Beck, his wife, by appropriate wills and codicils, had left to the United States all their property "unused or unexpended" at the death of the survivor. The estate consisted of both real and personal property and a question was raised regarding the authority of the Secretary of the Treasury to accept the devise of the real property because of the provision in 41 U.S.C. that "no land shall be purchased on account of the United States except under a law authorizing such purchase." In order to remove any such doubt the Congress passed the act of May 22, 1939, authorizing and directing the Secretary to accept and dispose of the real estate. *The point to be noted is that no doubt was thought to exist concerning, and therefore*

60 *no need to implement, the implied authority of the Secretary to accept the bequest of personal property.*

It is simply an inescapable truism, so far as Federal law is concerned, that unconditional bequests such as involved in this case can be made and accepted, and for many years have been made and accepted, by the Treasury Department in the exercise of authority implied from the Federal Constitution and the statute creating that department under the principles set forth in *Dickson v. United States* and *Neilson v. Lagow, et al., supra.* It is indicated in those cases that the power of the United States to acquire property by will and to take title to land by way of security for a debt, respectively, are implied from the Constitution.

That the authority of a *particular department* to exercise these powers depends upon, and may be implied from, the statute creating the department is also clearly indicated in *Neilson v. Lagow, et al.* The statute here applicable is the statute creating the Treasury Department, the same statute referred to by the Supreme Court in *Neilson v. Lagow, et al.*—subsequently amended (5 U.S.C. 241 *et seq.*), but not with effect upon the question here involved.

That the Federal law must be read together with the State law is indicated by the cases dealing with the provision in the statute relating to the National Home for Disabled Volunteer Soldiers, *supra*, requiring agreements by applicants for admission to the home " that all personal property of said applicant shall, upon his death * * * at
61 once pass to and vest in said Board of Managers"—
apparently involving in large part the precise legal questions herein considered. That section of the statute and the contracts executed thereunder have been upheld as valid. *United States v. Stevens*, 302 U.S. 623, 626-628; *National Home v. Wood*, 299 U.S. 211, 215; *Mauck v. United State* (C.C.A., 9th Circuit), 94 F. (2d) 745, 746. See also: *Estate of Lindquist*, 25 Cal. (2d) 697, 705; cert. denied 325 U.S. 869; *Estate of Walker*, 25 Cal. (2d) 719; cert. denied 325 U.S. 869. The following is quoted from *United States v. Stevens:*

> The Court of Appeals was of the opinion that the act of Congress authorizing the contract was void as an interference with the reserved rights of the state of the veteran's legal domicile when he died (Massachusetts) in that "it was at most but an attempt to make a future testamentary disposition of McGovern's property, when such a disposition could only be effected by will."
>
> This contract, however, is valid under the applicable state law. The Supreme Court of Massachusetts in 1931 in the case of *Hale v. Wilmarth*, 274 Mass. 186, 189; 174 N.E. 232, said, "The statute of wills, * * * does not prevent an owner of property from stipulating by contract for the disposition of his property at the time of his death." * * *
>
> In passing the act of June, 1910, Congress merely directed the terms and conditions under which veterans, consistently with state law, can obtain admittance to Homes built, maintained and operated by the government for the benefit of veterans. * * *

62 This contract is valid and enforceable, and since no claim was made by heirs or legatees within five years after his death, the veteran's personal property passed to the Home for the benefit of its inmates.

Such contracts do not of their own force, under State law, operate as testamentary dispositions of, or pass title to, the affected property. That this is true in Massachusetts, where the question in *United States v. Stevens*, arose, clearly appears from the cases cited in the Supreme Court's opinion. *Murphy v. Murphy*, 217 Mass. 233, 236; *Hale v. Wilmarth*, 274 Mass. 186, 189. The situation is the same in California. *Mauck v. United States, supra*, cited in *Estate of Lindquist, supra*. The import of the decision in the *Stevens* case appears to be that, since the State permitted its citizens to make contracts that could be enforced in proceedings against their estates after death, there could be no valid objection to the Federal statute requiring the execution of such contracts upon admission to the National Home and attributing to them an effect different only in form, rather than in substance, from the effect which they would have under State law.

It would seem incongruous that a contract that property shall pass at death is valid and accomplishes the intended result (as held in *United States v. Stevens* and other cases, *supra*), that an undertaking to make a will with such effect is enforceable (which was the basis of the con-
63 clusion in the *Stevens* case), but that if the will is actually made it is inoperative. The reasoning and the basis of the conclusion in *United States v. Stevens* appear to require that the will be given effect notwithstanding doubt (if any really exists) whether the result could be accomplished in the precise manner under the State law alone.

Bequests of money and other personal property have been made and awarded to the United States in many cases, both in this country and aboard. (The cases are largely unreported.) Aside from the recent litigation in California, so far as counsel are aware no court, anywhere, has questioned the right of the United States to take personal property left to it by will. Aside from the *Fox* case[2] this statement is true also regarding devises of real property. Recent and pending California cases in which the question has been raised are discussed in Part II hereof.

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[2] *In the Matter of Will of Fox*, 52 N. Y. 530, affirmed in *United States v. Fox*, 94 U. S. 315, concerned a devise of land and is discussed and distinguished in Part III hereof.

II.

THE STATE LAW, PROPERLY CONSTRUED, IMPOSES NO OBSTACLE TO THE ACQUISITION OF THIS PROPERTY BY THE UNITED STATES.

In *Estate of Hendrix*, 77 A.C.A. 719, the District Court of Appeal, Second Appellate District, upheld a bequest to the United States Veterans' Administration for the benefit of disabled veterans of the World War. The Court concluded:

> * * * It is clear to us that there was no error in holding that the bequest to the agency was, in effect, a bequest to the parent, the United States of America.
>
> We entertain no doubt that the United States Government is a corporation within the meaning of section 27 of the Probate Code. * * *
>
> The bequest to the Veterans' Administration was a bequest to the United States Government, a corporation; the government was expressly authorized by statute to take donations of property through what is now the Veterans' Administration, and the bequest is valid. * * *

The District Court of Appeal in this case attempts to distinguish *Estate of Hendrix*, points out that the bequest here involved "is not to any agency of the Government, incorporated or unincorporated, or to the Government as trustee, or for any particular purpose or use," that the question is simply whether the United States *eo nomine* can take property by will under Section 27 of the California Probate Code, and answers that question in the negative.

We think the attempted distinction is without merit. There is no difference for the purpose here involved between the United States and one of its agencies. Cf. *United States Grain Corp. v. Phillips*, 261 U. S. 106, 113-114. There cannot be attributed to the legislature an intention that the validity of bequests should depend upon the precise status (e. g. as a corporation or *quasi* corporation) of the Federal agency administering them, or upon whether the bequests are made to the agency itself or to the United States. The United States acts only through its agencies. The Court does not discuss Section 13,841 of the California Revenue and Taxation Code, which exempts "*property transferred to * * * The United States*" from California inheritance taxes.

Section 27 of the Probate Code can reasonably be construed as authorizing bequests to the United States *eo nomine*. The term "corporation," as used therein, includes a public corporation. *Estate of Bulmer*, 59 Cal. 131; *City of Pasadena v. Stimson*, 91 Cal. 238, 248; *Estate of Coleman*,

167 Cal. 212, 216. This appears to have been clearly so under the language of Section 1275 of the Civil Code, which is copied below:

> Sec. 1275. Who may take by will. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that *corporations other than counties, municipal corporations,* and corporations formed for scientific, literary, or solely educational or hospital purposes, or primarily for the public preservation of forests and natural scenery, cannot take under a will, unless expressly authorized by a statute * * *. [Italics supplied.]

Section 27 of the Probate Code is based upon Section 1275 of the Civil Code. *Estate of Yule*, 57 Cal. App. (2d) 652, 655. No reason appears for implying that the term "corporation" is now to be more narrowly construed
66 so as to deny to public corporations under Section 27 a right which they had under Section 1275.

That the United States is a corporation is without doubt. *Van Brocklin v. State of Tennessee*, 117 U. S. 151, 154; *Respublica v. Sweers*, 1 Dall, 41, 44. That the term "corporation" when used in a statute may appropriately include the United States is also clear. *Ohio v. Helvering*, 292 U. S. 360, 370; *Georgia v. Evans*, 316 U. S. 159, 161.

The provision in Section 27 of the Probate Code that "no other corporation can take under a will, *unless expressly authorized by statute.*" [Italics supplied] does not contemplate exclusively a statute of California. That conclusion is required here in order to give effect to the probable intent of the legislature. And this doubly supports the argument because the precedents indicate that the view advocated is the correct one even aside from the factors that give it added weight in this case.

In re Hauge's Estate, 92 Mont. 36, 39, 41, dealt with a statute comparable to that of California: It read: "A testamentary disposition may be made to any person capable of taking the property so disposed of, except corporations other than those formed for scientific, literary, or solely educational purposes, cannot take under a will, *unless expressly authorized by statute.*" [Italics supplied.] The Court held that the italicized words included the corporation law of another State. It said:

67 The statute (Sec. 6977) contains no special prohibition against foreign corporations. If a *Montana corporation is expressly authorized to take under will*

a foreign corporation of the same or a similar class, authorized by its charter to take, may do so. [Italics supplied.]

Mr. Fletcher says: "A foreign corporation may take and hold personal property, if it is authorized to do so by its charter and it is not contrary to the public policy of the state for it to take such property. Personal property follows the *locus* of the owner, and there is no reason why it should be a matter of concern to the state that the personal property should pass to foreign corporations any more than to individuals residing out of the state. Consequently it is well said that a bequest of personal property or money to a foreign corporation is valid, if the corporation has the capacity to take the bequest and the testator is not prohibited by the laws of the state in which he is domiciled from making such bequests." (8 Fletcher, Cyc. Corp., sec. 5870.)

Another term in Section 27 of the Probate Code which may be interpreted as including the United States, if necessary, in order to avoid an undesirable result not intended by the legislature, is the word "State." Although we find no pertinent California case, the word has been declared to include the United States in two cases arising under statutes of other States (relating to matters other than wills). *Terry v. Olcott*, 4 Conn. 442, 445; *Alexandria v. McClary*, 167 Va. 199, 204.

68 If the United States is not a "corporation" or a "State" within the meaning of those terms as used in Section 27 of the Probate Code, the provision that "no other *corporation* can take," etc., is inapplicable; the bequest is neither authorized nor forbidden, and the Code is silent on the subject. In such circumstances we must look elsewhere to determine the sole remaining question, which relates to the legatee's capacity. (There is, as hereinbefore pointed out, no doubt concerning the capacity of the United States under Federal law to take the bequest.) The applicable principles are set forth in the following cases:

Estate of Apple, 66 Cal. 432, 434:

"The code establishes the law of this state respecting the subjects to which it relates"; but this, of course, does not mean that there is no law with respect to such subjects except that embodied in the code. When the code speaks, its provisions are controlling, and they are to be liberally construed, with a view to effect its objects and to promote justice—the rule of the com-

mon law that statutes in derogation thereof are to be strictly construed having been expressly abolished here; but where the code is silent, the common law governs.

Matter of Huss, 126 N. Y. 537, 544:

The ability to take the testamentary bequest depends upon the law of the legatee's domicile. Our laws do not prohibit the bequest or the taking, and the sole question to be considered relates to the legatee's capacity.

69 Cf. *In re Neagle*, 39 Fed. 833, 855; affirmed, 135 U. S. 1.

Appellant (but not the Court below) cites *Estate of Loring*, 74 A.C.A. 49, in which a bequest to a municipality in another State was denied. This case was reversed by the Supreme Court upon the ground that the decree distributing the bequest to the municipality had become final and conclusive. *Estate of Loring*, 29 A. C. 428. Some of the statements in the opinion of the District Court of Appeal in the *Loring* case would be demonstrably erroneous if applied to bequests to the United States or its agencies. But the Court was not then dealing with such bequests, was perhaps unfamiliar with the facts and the practice regarding them, and certainly did not have the benefit of the briefs and arguments later presented to *Estate of Hendrix, supra*, and in this case.

The unsupported observation of the District Court of Appeals in *Estate of Loring* regarding "the inherent indisposition of any sovereign state * * * to authorize the transfer of its wealth to the coffers of another state or government" would seem to have little practical bearing upon the validity of the bequest there involved of a comparatively small sum for the construction and maintenance of a hospital. It appears comparable to the bequest to the University of Washington (an institution established and supported by the State of Washington), which was upheld in *Estate of Yule, supra*. But, in any event, a bequest to the United States is a wholly different matter from

70 a bequest to a State (cf. *Testa v. Katt*, 330 U. S. 386, 389) and is applied for the benefit of the people of California no less than for the benefit of the people in other States of the Union.

Moreover, *United States v. Stevens*, *National Home v. Wood*, and *Mauck v. United States*, *supra*, make it clear that a resident of California, acting pursuant to Federal law, can make a testamentary transfer of property to the United

States. To assert the contrary is merely to argue that while this can be done by contract effective at death it cannot be done by will. But when the cases are analyzed, as we have previously done in Part I hereof, we submit that it will be found that the right to make a testamentary transfer by will exists *a fortiori*.

The language quoted by the Court below from *United States v. Fox*, 94 U. S. 315, 321, that "the term 'person' as here used * * * cannot be so extended as to include within its meaning the Federal Government," is, of course, as the Supreme Court pointed out, the construction placed upon the New York statute by the New York Court of Appeals.[3]

That the words "person" and "corporation" when used in a statute do include the United States (except, of course, where the context or legislative history indicate a contrary intention) is made clear in the later decisions of the Supreme Court of the United States. *Ohio v. Helvering* and *Georgia v. Evans, supra*.

71 Furthermore (aside from the opinion of the Court below), the only case found which expressly applied the strict rule of the *Fox* case in determining the "persons" and "corporations" authorized to acquire property by will is *In re Beck's Estate*, 44 Mont. 561. It held invalid a bequest to the Orphans' Home, an institution of the State of Montana. One of the three justices vigorously dissented, stating in part:

> I agree that the right to make testamentary disposition of property depends entirely upon the will of the legislature and that the State may withhold it altogether. Neither is the right to take by descent an inherent one. I also concur in what is said concerning the effect of our Code provisions governing the right to make a will, and of persons and corporations, as such, to take by will. But we must beware of pressing the words of the statute "to a dryly logical extreme." (*Noble State Bank v. Haskell*, 219 U. S. 104, 31 Sup. Ct. 186, 55 L. Ed. 112.) * * * In *United States v. Fox*, 94 U. S. 315, 24 L. Ed. 192 (cited in the majority opinion), it was held that a devise of real estate to the Government of the United States was void for the reason that a law of New York, similar to ours, allowed

[3] The New York law relating to devises to corporations has since been changed and will no longer support the interpretation then placed upon it. See General Corporations Law, Sec. 221; also *id.* Sec. 14 and Decedents' Estate Law, Sec. 12.

real estate to be devised only to natural persons and certain corporations. In my opinion, this decision is founded in a fundamentally erroneous notion of the purpose and effect of the State statute. With due respect for so high authority, it seems to me altogether unreasonable to declare that a sovereign State, holding the original and ultimate right of all property cannot
72 take by will because, forsooth, it has graciously allowed certain of its citizens (practically all of them) to take in like manner.

The direct effect of this decision was overcome by an act of the legislature approved, February 14, 1913 (Mont. Laws 1913, c. 17), specifically authorizing bequests to the State and its institutions. The question later arose regarding the right of a foreign corporation to acquire property by will. The decision unanimously upholding the right indicates that the Supreme Court of Montana no longer entertains the narrow view previously adopted by a majority of the Court in reliance upon *United States v. Fox. In re Hauge's Estate, supra.*

The Courts in California have heretofore upheld the authority of the United States and its agencies to acquire property by will. So far as counsel are aware, it is only in comparatively recent years that the question has been raised in this State. The cases listed below indicate the course of the decisions during the period in which the question has been controverted. (In most instances the amount of money stated is approximate.)

CASES DECIDED BY SUPERIOR COURTS AGAINST THE GOVERNMENT

Estate of Henry Kuhlmey, No. 2377, County of Colusa, 1935. Liberty bond ($500), "to the Letterman Hospital of San Francisco." The contestant contended that the decedent was of unsound mind, that the bequest was
73 charitable and void because made less than 30 days before death, and that the Letterman Hospital was not authorized by California law to take a bequest. The case was decided against the Government, and there was no appeal. The department's file does not indicate the basis of the Court's decision.

Estate of James E. Spencer, No. P-378, County of Los Angeles, 1937. Residue of the estate ($6,000), "to the Government of the United States of America". The Court denied the right of the United States to acquire the property. The Department of Justice decided not to take an appeal in that case but to explore the question further with a view to determining the course to be followed in the future.

In the later cases, in which the right of the Government has uniformly prevailed (except for the decision of the District Court of Appeal in this case), the Courts have been more fully informed by Government counsel regarding the precedents, practice, etc.

CASES DECIDED BY SUPERIOR COURTS IN FAVOR OF THE GOVERNMENT

Estate of Sophie Chanquet, San Francisco, 1930. $3100 (cash and a one-third interest in certain real property), "to the United States Veterans' Bureau for the benefit of the War Veterans' Hospital at Livermore," California. (This is quoted from a letter of the executor of the estate; our files do not contain a copy of the will.)

Estate of Paul E. McDonnol, No. 6724, Riverside County, 1935. Real and personal property ($16,000), "to the Secretary of the Navy * * * for the benefit of the hospital fund U. S. Navy."

74 *Estate of Lena H. Jeffress*, No. 52,104, County of Alameda, 1939. $2500, "to the Home for Disabled Veterans near Livermore, California."

Estate of Theresa C. Armentrout, No. 199,218, Los Angeles, 1941. United States bonds and postal savings certificate ($600), "to the United States of America".

Estate of Lyda Arnold White, Los Angeles, 1943. $2,000, "to the Veteran's Administration facility, at San Fernando, Cal."

Estate of Thomas H. Kullujian, No. 214,061, Los Angeles, 1943. Rug of historic value, "to the United States of America (as a token of my undying gratitude to the American nation for assistance and support given to Armenian orphans during and after the great war)".

Estate of Charles D. Drew, No. 220,248, Los Angeles, 1944. $8,000, "to the inheritance tax fund of my country the United States of America".

Estate of Belle M. Wickham Dawson, No. 27,773, County of Santa Clara, 1945. $800, "to the United States Government".

Estate of Wilafred Hazel Hendrix, No. 217,936, Los Angeles, 1945. $1,500, "to United States Veterans' Administration * * * for the purpose of rendering to disabled veterans of the World War * * * aid comfort, assistance * * *". The decision in favor of the Government was affirmed by the District Court of Appeal, Second Appellate District, 1947. 77 A.C.A. 719.

75 *Estate of William Hines*, No. 100,007, San Francisco, 1946. Defense bonds ($1,000), "to the U. S. Government".

Estate of Eliza Anderson, No. 224,631, Los Angeles, 1946. Real estate ($2,500), "to Uncle Sam (the Government) to be sold and the money to be used for defense".

Estate of Therese L. Van Kirk, No. 216,857, Los Angeles, 1946. Residue of estate ($3,000.), "to the United States of America".

Estate of Jack Cohen, No. 237,727, Los Angeles, 1946. United States defense savings bonds ($1,000), "to the United States of America".

Estate of Jennie Caro, No. 98,571, San Francisco, 1946. Residue of estate ($24,000), "to the U. S. Veterans' Administration for the purpose of aiding and assisting disabled veterans of the present World War".

Estate of Ernest John Ludford, No. 3,694, Imperial County, 1947. United States savings bonds ($700), "to the Government of the United States of America • • • in grateful remembrance for the freedom I have enjoyed under its protection".

Estate of Gust Burnison, No. 102,412, San Francisco, 1947. Personal property ($22,000), "to the United States Government, U. S. A." Order of the Superior Court upholding the will reversed by the District Court of Appeal, First Appellate District, 1948. This is the case covered by this petition.

76 *Estate of Emily P. Sanborn*, No. 241,228, Los Angeles, 1948. United States savings bonds and real property ($18,000), "to the United States of America".

Estate of Philip Rive, No. 100,101, San Francisco, 1948. Cash and securities ($116,000), "to U. S. Treasury Dept. to assist in war effort".

It will be observed from the foregoing that fully one-half of these bequests and devises have been for such purposes as aid to members or former members of the armed forces undergoing hospitalization or domiciliary care, to assist in the war effort, and reduction of the public debt. It is reasonable to believe that others not so expressly stated were moved by such purposes. Then, too, there is the view entertained by some that the desired result is accomplished in substance whether the bequest goes into miscellaneous receipts or into a special account set up for a particular purpose, in view of the overall control by the

Congress of total disbursements.[4] Certainly bequests to the United States *co nomine* and without limitation as to use greatly increased during the war and during the period of uncertainty immediately preceding it.[5]

We further call attention to the fact that in connection with bequests made under some statutes it may be
77 regarded as unnecessary, or superfluous, to specify purpose. Thus, the act of April 3, 1945, *supra*, provides for the redemption of Government bonds donated, bequeathed, or by their terms, payable upon death of the owner, "to the United States or any officer thereof in his official capacity." In view of this statute (as to which, of course, all persons are chargeable with notice) there is a conclusive presumption that unconditional bequests of bonds are for redemption and, thereby, reduction of the public debt.

For the foregoing reasons it is not warranted by law to draw the distinction attempted by the Court below between bequests to the United States *co nomine* without limitation as to use, and bequests for an expressly stated purpose or to an agency of the United States. And we again call attention to section 13,841 of the Revenue and Taxation Code, which exempts "*property transferred to * * * The United States*" from California inheritance taxes. This clearly contemplates bequests to the United States *co nomine* and appears to constitute irrefutable proof that the Legislature of California attaches to section 27 of the Probate Code the meaning herein urged.

III.

IF THE STATE LAW SHOULD BE CONSTRUED AS INVALIDATING THIS BEQUEST IT WOULD VIOLATE THE FEDERAL CONSTITUTION.

To hold that the United States or its agencies may not acquire property by will in California would be to
78 effect an unlawful discrimination against the United States (*Republic Pictures Corp. v. Kappler*, 151 F. (2d) 543, 546-547 (C. C. A. 8), and cases there cited) as well as an infringement of the inherent sovereign power of the United States, derived from the Constitution and im-

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[4] It may be noted in this connection that the late Justice Oliver Wendell Holmes after making certain specific bequests, including a bequest of books, etc., to the Library of Congress, left the residue of his estate merely "to the United States of America". *Estate of Oliver Wendell Holmes*, Adm. No. 47,981, U. S. Dist. Ct., D. C.

[5] Bequests and devises "to further the war program" were accepted by the Secretary of the Treasury and allocated to suitable appropriations under Title XI of the Second War Powers Act (56 Stat. 176, 183).

plemented by statute, to acquire property by will *(Dickson v. United States, supra)*.

It is true that in *United States v. Fox, supra*, the Supreme Court affirmed a holding by the New York Court of Appeals that the United States could not acquire real property by will in the State of New York under the New York statute then in effect. (A bequest of personal property to the United States under the same will had been upheld by the Surrogate and there was no appeal.) Pertinent paragraphs of *United States v. Fox* are quoted below:

> The power of the State to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted. It is an established principle of law, everywhere recognized, arising from the necessity of the case, that the disposition of immovable property, whether by deed, descent, or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated. *McCormick v. Sullivant*, 10 Wheat. 202. The power of the State in this respect follows from her sovereignty within her limits, as to all matters over which jurisdiction has not been expressly or by necessary implication transferred to the Federal govern-
> 79 ment. The title and modes of disposition of real property within the State, whether *inter vivos* or testamentary, are not matters placed under the control of Federal authority. Such control would be foreign to the purposes for which the Federal government was created, and would seriously embarrass the landed interests of the State.
>
> Statutes of will, as is justly observed by the Court of Appeals, are enabling acts, and prior to the statute of 32 Hen. VIII, there was no general power at common law to devise lands. The power was opposed to the feudal policy of holding lands inalienable without the consent of the lord. The English Statute of Wills became a part of the law of New York upon the adoption of her Constitution in 1777; and, with some modifications in its language, remains so at this day. Every person must, therefore, devise his lands in that State within the limitations of the statute or he cannot devise them at all. His power is bounded by its conditions, that statute provides that a devise of lands may be made "to any person capable by law of holding real estate; but no devise to a corporation shall be

valid unless such corporation be expressly authorized by its charter or by statute to take by devise."

The term "person" is here used applies to natural persons, and also to artificial persons,—but cannot be so extended as to include within its meaning the Federal government. It would require an express definition to that effect to give it a sense thus extended. And the term "corporation" in the statute applies only to such corporation as are created under the
80 laws of the State. It was so held by the Court of Appeals in *White v. Howard*, 46 N. Y. 164, 165, and its construction of the statute is conclusive upon us. A devise to the United States of real property situated in that State is, therefore, void.

We feel that *United States v. Fox* was viewed by the Court as an isolated attempt by an individual to transfer to the Federal Government a part of the territory of the State without legislative sanction by either the Congress or the State legislature and notwithstanding the provision in the Revised Statutes, section 3736 (41 U. S. C. 14), that "no land shall be purchased on account of the United States, except under a law authorizing such purchase"—which was the only Federal statute considered in that case.

We believe that the constitutional question was not adequately considered. We further believe that the case would not be followed if the question should again be presented to the Supreme Court of the United States[6] in the light of the long practice, hereinbefore mentioned, the numerous congressional enactments on the subject (including
81 the provision in 40 U. S. C. 304, authorizing the Secretary of the Treasury to sell lands acquired by the United States by devise), and later cases on the general subject. See, for example, the following cases:

United States v. Stevens, National Home v. Wood, and *Mauck v. United States, supra*, upholding the validity of the provision in the statute relating to the National Home for

[6] The natural unawareness of the Court at the time of the decision in *United States v. Fox* of constitutional doctrines not yet formulated, and its concurrence in views then entertained regarding the breadth of Federal power and the consequent limitations upon the State authority which have not prevailed in subsequent opinions of the Court, is well illustrated by *Doyle v. Continental Insurance Company*, 94 U. S. 535, decided at the same term. It held that a State might admit a foreign corporation to do business within the State upon condition that it would not remove to a Federal court a suit instituted against it in a State court, but this decision was overruled in *Terral v. Burke Construction Co.*, 257 U. S. 529, 533.

Disabled Volunteer Soldiers, requiring agreements by applicants for admission to the Home "that all personal property of said applicant shall, on his death * * * at once pass to and vest in said Board of Managers."

Estate of Lindquist and *Estate of Walker*, *supra*, upholding a Federal statute providing for the escheat to the United States of the funds of certain deceased veterans derived from compensation or pensions received from the United States.

United States v. Summerlin, 310 U. S. 414, holding that a State statute limiting the time within which claims can be filed in a probate court does not bar the United States.

Clark v. Allen, 331 U. S. 503, 517: "Rights of succession to property are determined by local law. * * * *Those rights may be affected by an overriding federal policy*, as where a treaty makes different or conflicting arrangements. * * * Then the state policy must give way, * * * " [Italics supplied.]

Quite apart, however, from the soundness of the decision in the *Fox* case, it should be noted that
82 section 27 of the California Probate code is entirely different from the New York statute. Section 27 specifically authorizes bequests "to the state, to counties, to municipal corporations * * *." Under the contention made by appellant, these political entities may take by will in California but the United States Government may not. This, we submit, would be an unlawful discrimination against the United States. The New York statute, on the other hand, merely authorized devises of land "to any person capable by law of holding real estate" and denied the right to take by devise to any corporation unless expressly authorized by charter or statute to do so. No argument was made in the *Fox* case of unlawful discrimination against the United States, nor did the Court address itself to any such argument. There can be little doubt that the California statute, as construed by the Court below, is invalid as an unlawful discrimination against the United States. See *Republic Pictures Corp. v. Kappler*, *supra*, and cases cited; *City of Lincoln v. Ricketts*, 297 U. S. 373, 376; *Testa v. Katt*, *supra*; *Second Employers' Liability Cases*, 223 U. S. 1, 57-58. As the Court remarked in *Republic Pictures Corp. v. Kappler*, *supra*, at page 546:

> A state may not discriminate against rights accruing under federal laws. McKnett v. St. Louis & S. F. R. Co., 292 U. S. 230, 54 S. Ct. 690, 78 L. Ed. 1227; Pufahl v. Estate of Parks, 299 U. S. 217, 57 S. Ct. 151, 81 L. Ed. 133. Except the special statute directed at the causes

of action arising under federal law, every other limitation on an action at law or suit in equity in the Iowa
83 statutes is directed at the nature of the claim asserted without reference to the authority which creates the right asserted. This is a discrimination against the United States. The action for overtime under the statute is an action on contract; at least, the federal statute is bottomed upon a contract of employment. As said in Northwestern Yeast Co. v. Broutin, 6 Cir., 133 F. 2d 628, 630: "The federal statute is premised upon the existence of an employement contract * * * The action for double compensation may be considered as debt or as an action for wages due under the employment agreement."

Were it not for the fact that plaintiff's right can be traced to a federal statute, he could have brought his action in five years after its accrual if his contract were not written or he could have brought it in ten years if it were written. His claim or cause of action is discriminated against solely because it arises under a federal statute. This discriminatory treatment of a claim arising under a federal statute in effect makes inferior congressional enactments and rights which under our jurisprudence are intended to be paramount and supreme. As said by the Supreme Court in Stewart & Co. v. Sadrakula, 309 U. S. 94, 60 S. Ct. 431, 436, 84 L. Ed. 596, 127 A. L. R. 821: "Where enforcement of the state law would handicap efforts to carry out the plans of the United States, the state enactment must, of course, give way."

While the sphere of sovereignty of the federal government is a limited one, yet its power over the subjects committed to it is full and complete and its laws are "the supreme Law of the Land
84 * * * any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." Art. 6, U. S. Constitution. As a federal right is here involved, the state can not justify a discrimination against such right. Miles v. Illinois Central R. Co., 315 U. S. 698, 62 S. Ct. 827, 86 L. Ed. 1129, 146 A. L. R. 1104.[1]

[1] It is true that *United States v. Fox*, was cited in *Irving Trust Co. v. Day*, 314 U. S. 556, in support of the principle that a State may limit, condition or even abolish the power of testamentary disposition of property within its jurisdiction. The *Irving Trust Company* case, however, did not involve any question of the rights of the United States or of any unconstitutional discriminations.

In conclusion, "a statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score." *United States v. Jin Fuey Moy*, 241 U. S. 394, 401; *Fox v. Washington*, 236 U. S. 273, 277; *Chesebrough v. City and County of San Francisco*, 153 Cal. 559, 567. This Court, therefore, should construe section 27 of the California Probate Code so as to avoid any constitutional difficulties. It is to be remembered, too, that the *Fox* case does not *require* a determination by this Court against the Government. In the *Fox* case the Court was confronted with a ruling of the highest Court of the State of New York holding that the term "corporation" in the New York statute included only corporations created under the laws of the State of New York, which ruling was of course binding on the Supreme Court. Here, however, the scope of the words "corporation" and "state" in section 27 is the question to be decided in this case and this Court is at liberty to, and
85 indeed should construe those words so as to avoid the constitutional difficulties which we have pointed out above. We respectfully submit that the United States is included within the meaning of the terms of section 27.

Conclusion

The State law properly interpreted authorizes the bequest to the United States; if the State law alone does not authorize the bequest it must be read together with the Federal law in order to give effect to the Federal right and to avoid the unconstitutional discrimination that otherwise would result; the decision of the District Court of Appeal should be reversed.

Dated, September 24, 1948.

Respectfully submitted,

George T. Washington
Assistant Solicitor General

Frank J. Hennessy
United States Attorney

Robert B. McMillan
Assistant United States Attorney

John T. Fowler
Attorney, Department of Justice
Attorneys for the United States

All by Robert B. McMillan
Asst. U. S. Atty.

(Appendix Follows)

from the Supreme Court of California to the Supreme Court of the United States; and

It is further ordered that the Clerk of the Supreme Court of California prepare and certify a transcript of the
119 record in this cause, as may be designated by the appellant and appellees, and transmit the same to the Supreme Court of the United States so that the Clerk of said Court shall have said record within sixty days from this date.

Dated: June 16, 1949.

FRED M. VINSON
Chief Justice of the United States

120 In the Supreme Court of the United States

October Term, 1948

Citation in usual form, filed June 21, 1949, omitted in printing.

122 In the Supreme Court of California

In Bank

(Title Omitted)

(File Endorsement Omitted)

Praecipe for Transcript of Record—Filed June 21, 1949

To the Clerk of the Supreme Court of the State of California.

Sir:

You are hereby requested to prepare a transcript of the record to be filed in the Supreme Court of the United States pursuant to an appeal allowed in the above-entitled cause, and to include in such transcript of record the following:

1. Clerk's transcript on appeal as filed in the Supreme Court of the State of California.
2. Proceedings in the Supreme Court of the State of California, including petition of United States for a hearing by the Supreme Court.
3. Petition for appeal.
4. Assignments of errors and prayer for reversal.
5. Statement of jurisdiction on appeal.
123 6. Order allowing appeal.
7. Citation on appeal.

87 *Appendix*

In the District Court of Appeal
State of California
First Appellate District
Division Two
1 Civil No. 13,617

In the Matter of the Estate of
GUST BURNISON,
also called GUSTAV BURNISON, Deceased.
JOE BURNISON,
APPELLANT
PHIL C. KATZ, as Public Administrator of the City and County of San Francisco, and THE UNITED STATES OF AMERICA,
RESPONDENTS.

OPINION

The decedent, a resident of San Francisco, left a will reading as follows:

88 "June 30 1932
205—3rd St.
San Francisco California

This is my last Will & Wish
That I give all I own & Possess to The United States goverenment U. S. A.
The beneficiary shall be excutor
My body shall be cremated after death

Signed GUST BURNISON
Approved July 27 1944"

The testator left personal property appraised at $22,668.70. His heirs at law are three brothers, a sister, and thirteen nieces and nephews, all of whom petitioned for distribution of the whole estate to themselves on the ground that "the United States of America is not authorized by statute or otherwise to take under a will" executed in California by a resident of this state. The United States filed written objections thereto which the court sustained. From the order denying the petition for distribution the heirs appeal.

"At the outset of this consideration it is proper to say that the right to make testamentary disposition of property is no an inherent right or a right of citizenship, nor is it even a right granted by the constitution. It rests wholly

upon the legislative will, and is derived entirely from the statutes." (Estate of Walker, 110 Cal. 387, 390 [42 P. 815, 52 Am. St. Rep. 104, 30 L. R. A. 460].)

89 "Rights of succession to the property of a deceased, whether by will or by intestacy, are of statutory creation, and the dead hand rules succession only by sufferance. Nothing in the Federal Constitution forbids the legislature of a state to limit, condition, or even abolish the power of testamentary disposition over property within its jurisdiction." (Irving Trust Co. v. Day, 314 U. S. 556 [62 S. Ct. 398, 86 L. Ed. 452, 137 A. L. R. 1093].)

By section 27 of the Probate Code our Legislature has prescribed "Who may take by will" as follows: "A testamentary disposition may be made to the state, to counties, to municipal corporations, to natural persons capable by law of taking the property, to unincorporated religious, benevolent or fraternal societies or associations or lodges or branches thereof, and to corporations formed for religious, scientific, literary, or solely educational or hospital or sanatorium purposes, or primarily for the public preservation of forests and natural scenery, or to maintain public libraries, museums or art galleries, or for similar public purposes. No other corporation can take under a will, unless expressly authorized by statute."

The government argues that the phrase "A testamentary disposition may be made to the state" may be interpreted as including the United States. While it is true that historians and other writers frequently adopt the literary or rhetorical expression and speak of the nation as "the state," the draftsmen of legislation as a rule choose language for its definiteness rather than its elegance.

90 Surely if the Legislature had intended to include the federal government it would have named it. As aptly said in United States v. Cooper Corp., 312 U. S. 600, 606 [61 S. Ct 742, 85 L. Ed. 1071], " 'the ordinary dignities of speech would have led' to its mention by name." Moreover, the collection of "the state" is with "counties" and "municipal corporations," an obvious incongruity if the government's argument were adopted.

That "the state" means only California is clear from the legislative history of section 27, which prior to 1931 was section 1275 of the Civil Code. The original section contained the provision "that no corporation can take under a will, unless expressly authorized by statute so to take."

In 1881 the Legislature adopted "An act to authorize the several counties, cities and counties, cities and towns of this State, * * * to receive property by gift, bequest, and devise, * * * " (Stats. 1881, p. 2.) In 1905, an amendment carried "counties" and "municipal corporations" into section 1275, and the code commissioner's note shows that "The amendment in substance incorporates into the section the provisions of the act of 1881, page 2, authorizing the several counties, cities and counties, cities and towns of the state, to recover property by gift, bequest and devise." (See legislative history subjoined to section 27.) Clearly when "counties" and "municipal corporations" were thus added, those words went into section 1275 with the same geographical meaning which the act of 1881 had expressly given them, and which they had worn for 24 years. In 1931, then, when the Legislature added "the state" in con-
91 nection with "counties" and "municipal corporations", it could not have meant any state other than California.

The Case of United States v. Fox, 94 U. S. 315 [24 L. Ed. 192], is directly in point. The testator, a resident of the state of New York, devised and bequeathed all his property to the government of the United States. The statute of New York provided that a devise of lands may be made "to any person capable by law of holding real estate; but no devise to a corporation shall be valid unless such corporation be expressly authorized by its charter or by statute to take by devise." The sole question was as to "the validity of a devise to the United States of real estate situated in the State of New York." The Supreme Court held (as the state court had, 52 N. Y. 530 [11 Am. Rep. 751]) that this question had to be determined by the laws of New York. The court, speaking through Mr. Justice Field, said: "The term 'person' as here used applies to natural persons, and also to artificial persons,—bodies politic, deriving their existence and powers from legislation,—but cannot be so extended as to include within its meaning the Federal government. It would require an express definition to that effect to give it a sense thus extended * * * A devise to the United States of real property situated in that State is, therefore, void."

True the New York law spoke only of devises of real property while the instant case deals with a bequest of personalty. The reasoning of the Fox case, however, based as it is on the right of a state to say who can, and who cannot, take by the will of one of its residents, applies with equal

8. Appellant's notice of appeal and statement directing appellees' attention to paragraph 3, rule 12, Rules of the Supreme Court of the United States.
9. This praecipe.
10. Appellees' acknowledgment of service of preceding documents designated as numbers 3 to 9 inclusive.
11. All statements and motions required and permitted to be filed under rule 21 of the Rules of the Supreme Court of the United States.

Dated: June 16, 1949.

PHILIP B. PERLMAN
Philip B. Perlman
Solicitor General

124 In the Supreme Court of the United States

Statement of Points Relied Upon and Designation of Record for Printing—Filed Oct. 11, 1949

Pursuant to Rule 13, paragraph 9 of this Court, the appellant states that it intends to rely on all of the points in its assignment of errors.

The appellant deems the entire record as designated in its praecipe for transcript of record heretofore filed in the Supreme Court of the State of California necessary for the consideration of the points relied upon.

THE UNITED STATES OF AMERICA
PHILIP B. PERLMAN
Solicitor General

CITY OF WASHINGTON,
District of Columbia, ss.

VIOLA A. BARTZ, being duly sworn, deposes and says that there has this day been transmitted by registered letter to Harry N. Grover, attorney of record for appellee Joe Burnison and Henry F. Boyen, attorney of record for appellee Phil C. Katz, Public Administrator of the City and County of San Francisco, in the above entitled cause, copies of appellant's Statement of Points Relied Upon and Designation of Record for Printing, this day duly filed with the Clerk of this Court.

VIOLA A. BARTZ

Subscribed and sworn to before me this 10th day of October, 1949.

GLADYS E. McGAFFEY
Notary Public, D. C.

92 force to this case. Indeed the Supreme Court as recently as 1942 in the Irving Trust Co. case *supra*, cited the Fox case as supporting its broad statement, already quoted, that "Nothing in the Federal Constitution forbids the legislature of a state to limit, condition, or even abolish the power of testamentary disposition over property within its jurisdiction."

The government's contention that if the state law should be construed as invalidating the bequest "serious constitutional questions would arise" is answered by the Irving Trust Co. case. Its claim that assuming "that the Fox case cannot be distinguished, it must be regarded as overruled," is answered by the court's citation of it as recently as 1942.

It is not necessary to decide whether the words "authorized by statute" found in the last sentence of section 27 mean a statute of this state only, or one of any state, or an act of Congress, for the government says in its brief that "Various Federal statutes enacted from time to time have authorized particular agencies of the Government to acquire property by will and to apply it to stated uses" and then frankly concedes that "On the other hand, no Federal statute of general application has purported to authorize the United States to so acquire property."

The government relies chiefly on Estate of Hendrix, 77 Cal. App. 2d 647 [176 P. 2d 398] and incorporates into its brief the brief it filed in that case. The bequest there was to the "United States Veterans Administration," an agency

93 of the government. For the reasons appearing in the Hendrix opinion the questions presented in that case and in this are quite dissimilar. This bequest is to the United States of America, without qualification. It is not to any agency of the government, incorporated or unincorporated, or to the government as trustees, or for any particular purpose or use, charitable, benevolent or otherwise. It is in the same general form as was the devise in the Fox case, hence the question presented is simply whether the United States *eo nomine* can take by will under our statute. To answer it otherwise than in the negative would be "to insert what has been omitted" from the statute (Code Civ. Proc., § 1858).

The government relies, also, on Dickson v. United States, 125 Mass. 311 [28 Am. Rep. 230], where the court held valid a devise and bequest to the United States of America. In distinguishing the Fox case the court said that that case "proceeded upon the ground that the law of New York

allowed real estate to be devised only to natural persons and to corporations established by the Legislature of that state." The court then said "The statutes of this Commonwealth, where the testator had his domicil, and part of his real estate lay, make no restriction as to who may be devisees or legatees * * * " The California statute, as we have seen, contains definite restrictions.

The order appealed from is reversed.

GOODELL, *J.*

Nourse, P. J., and Griffin, J. pro tem., concurred.

Filed August 18, 1948.

WALTER S. CHISHOLM
Clerk

94 *Affidavit of Service by Mail*

State of California
City and County of San Francisco } ss.:

R. B. McMILLAN being duly sworn, says: That affiant is a citizen of the United States and a resident of the City and County of San Francisco; that affiant is over the age of eighteen years and is not a party to the within and above entitled cause; that affiant's business address is 422 United States Post Office and Courthouse Building, San Francisco, California; that on the 24th day of September, 1948, affiant served the within Petition of Respondent on the attorneys for appellant in said action by placing three true copies thereof in an envelope addressed to the attorneys of record for said appellant, at the business address of said attorneys, as follows:

Messrs. Harry N. Grover and
Everett H. Roan,
Attorneys at Law,
1500 Central Tower,
San Francisco, 3, California;

and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Post Office at San Francisco, California, where is located the office of the attorneys for the respondent by and for whom said service was made.

That there is a delivery service by mail at the place so addressed, and there is a regular communication by mail between the place of mailing and the place so addressed.

R. B. McMILLAN
Affiant

Subscribed and sworn to before me this 24th day of September, 1948.

MARION M. BENDER

My Commission Expires Dec. 24, 1950.
(Seal) (Copy)

95 In the Supreme Court of California In Bank

ESTATE OF BURNISON, Deceased

BURNISON,
APPELLANT

v.

KATZ, as Public Adm'r., etc., *et al.*,
RESPONDENTS

Order Granting Hearing After Judgment by District Court of Appeal—Filed Oct. 14, 1948

Respondent's (United States of America) petition for hearing GRANTED and cause transferred to this court.

Dated Oct. 14, 1948.

GIBSON
Chief Justice

CARTER
Justice

TRAYNOR
Justice

SPENCE
Justice

(File Endorsement Omitted)

96 In Supreme Court of California

Order of Consolidation—Dec. 7, 1948

The following is a portion of the minutes of the Supreme Court of the State of California on December 7, 1948, at San Francisco:

"S. F. 17620—Estate of Burnison
L. A. 20816—Estate of Sanborn

Causes called and consolidated for purposes of argument.
* * *"

97 In the Supreme Court of California In Bank
S. F. No. 17620

In the Matter of the Estate of
GUST BURNISON, also called Gustav Burnison, Deceased

JOE BURNISON,
APPELLANT

VS.

PHIL C. KATZ, as Public Administrator of the City and County of San Francisco, and THE UNITED STATES OF AMERICA,
RESPONDENTS

(File Endorsement Omitted)

Opinion—Filed March 22, 1949

This is an appeal from an order denying distribution of the decedent's estate to his heirs—three brothers, a sister, and thirteen nieces and nephews—and sustaining the objections of the United States of America, the sole beneficiary under the terms of the will. The entire estate—consisting of personal property appraised at $22,668.70—was left to "The United States government U. S. A." Appellant maintains that the "United States of America is not authorized by statute or otherwise to take under a will executed in the State of California by a resident"
98 thereof, that the testamentary "bequest" is therefore "void," and that all of the estate should be distributed to the "heirs at law of deceased under and pursuant to the laws of succession of" this state. His position is well taken under the prevailing statutory law applicable in determination of the issue involved.

At the outset it should be said that the authorities without exception hold that "the right to make testamentary disposition of property is not an inherent right or a right of citizenship, nor is it even a right granted by the constitution. It rests wholly upon the legislative will, and is derived entirely from the statutes." (*In re* Walker, 110 Cal. 387, 390; see, also, Estate of Carpenter, 172 Cal. 268, 269; Estate of Wilkinson, 113 Cal. App. 645, 646.) The legislature may withhold the right altogether, or impose any conditions or limitations upon it which it chooses. (Estate of Durlewanger, 41 Cal. App. 2d 750, 752; Estate of Bauer, 51 Cal. App. 2d 636, 637.) As a necessary postulate of this proposition, it follows that the legislature has the exclusive

power to designate those whom the testator may make the objects of his bounty. (*In re* Wilmerding, 117 Cal. 281, 284.)

Equally well settled is the general rule that the distribution of a decedent's personal estate is governed by
99 the law of his domicile. (Estate of Sloan, 7 Cal. App. 2d 319, 333-334.) It was early recognized in decisions of this state—as Estate of Apple, 66 Cal. 432, 436-437; Whitney v. Dodge, 105 Cal. 192, 197-198; Estate of Lathrop, 165 Cal. 243, 247—and it is likewise declared by section 946 of the Civil Code.

In the light of these established principles, the language of section 27 of the Probate Code, prescribing "who may take by will," must be construed as determinative of the validity of the bequest here in question. That section reads as follows: "A testamentary disposition may be made to the state, to counties, to municipal corporations, to natural persons capable by law of taking the property, to unincorporated religious, benevolent or fraternal societies or associations or lodges or branches thereof, and to corporations formed for religious, scientific, literary, or solely educational or hospital or sanatorium purposes, or primarily for the public preservation of forests and natural scenery, or to maintain public libraries, museums or art galleries, or for similar public purposes. No other corporation can take under a will, unless expressly authorized by statute."

The Government cites the opening language of the statute, in its designation of "the state" as a proper recipient of a
"testamentary disposition," as embracing the United
100 States. But in construing a statute, words are to be taken in their ordinary sense and normal signification (23 Cal. Jur. sec. 109, p. 730; Taylor v. Lundblade, 43 Cal. App. 2d 638, 641; Gayer v. Whelan, 59 Cal. App. 2d 255, 262), and the Government's suggested extension of the meaning of "the state" runs counter to this settled rule. Although it must be recognized that historians and other writers frequently use the literary or rhetorical expression and refer to the nation as "the state," the draftsmen of legislation as a rule employ language notable for its precise and definitive character rather than for its elegance. So it would appear that if the legislature had intended to include the United States within the purview of the statute, " 'the ordinary dignities of speech would have led' to its mention by name." (United States v. Cooper Corporation, 312 U. S. 600, 606, citing Davis v.

Pringle, 268 U. S. 315, 318.) Also the collocation of the successively authorized recipients of a "testamentary disposition" should be taken into consideration in construing the meaning of the terms of the statute. (23 Cal. Jur. sec. 110, p. 732; People v. One 1940 Chrysler Coupe, 48 Cal. App. 2d 546, 549.) Here the collection of "the state" is with "counties" and "municipal corporations," in obvious incongruity if the Government's contention were accepted.

Moreover, the statute uses the *definite* article in its mention of "the state," ostensibly to signify California and to distinguish its purport from the *indefinite* reference of "a state," which latter term might reasonably be construed to mean any established government on earth. So pertinent is the legislative history of section 27 of the Probate Code. As first enacted in 1872 as section 1275 of the Civil Code, it was provided that "no corporation" could take from a California testator "unless expressly authorized by statute" so to do. In 1873 the section was amended so that corporations "formed for scientific, literary, or solely educational purposes" might take under such a will. (Amendments to the Codes, 1873-74, p. 275.) In 1881 a separate statute was enacted authorizing the "several counties, cities and counties, cities and towns of this state to accept * * * any gift, bequest and devise. * * *" (Stats. 1881, p. 2.) In 1903 section 1275 was amended to permit corporations formed for "hospital purposes" also to take under a will. (Stats. 1903, p. 258.) In 1905 the section was further amended to permit "counties" and "municipal corporations" to take under a California will, subject to the provisions of section 1313, the antecedent of section 41 of the Probate Code concerning "restrictions" upon charitable bequests and devises (Stats. 1905, p. 605), and the code commissioner's note shows that

"The amendment in substance incorporates into the section the provisions of the act of 1881, page 2, authorizing the several counties, cities and counties, cities and towns of the state, to recover property by gift, bequest and devise." (See legislative history subjoined to section 1275.) Manifestly, therefore, when "counties" and "municipal corporations" were so engrafted into section 1275, they carried the same geographical meaning of territorial components of this state as the "act of 1881" had expressly given them, and which they had signified for twenty-four years. Then in 1931, when, upon adoption of the Probate Code, the legislature added to the list of entities privileged to take under a California will "the state"

in connection with "counties" and "municipal corporations," it could not have meant any state other than California.

The case of United States v. Fox, 94 U. S. 315, is closely in point. There the testator, a resident of the state of New York, "devised and bequeathed" all his property "to the government of the United States." The statute of New York provided that a devise of lands might be made "to any person capable by law of holding real estate; but no devise to a corporation shall be valid unless such corporation be expressly authorized by its charter or by statute to take by devise." The sole question presented for consideration was "the validity of a devise to the United States
of real estate situated in the State of New York."
103 The Supreme Court of the United States declared (as the state court had, 52 N. Y. 530, 534) that "this question" was "to be determined by the laws of [New York]." (94 U. S. 320.) Then the court, speaking through Mr. Justice Field, stated at page 321 as follows: "The term 'person' as here used applies to natural persons, and also to artificial persons,—bodies politic, deriving their existence and powers from legislation,—but cannot be so extended as to include within its meaning the Federal government. It would require an express definition to that effect to give it a sense thus extended. * * * A devise to the United States of real property situated in that State [New York] is, therefore, void."

It is true that the New York law imposed limitations affecting only devises of "real estate" while the present case concerns the validity of a bequest of personalty under a statute regulating alike the power of testamentary disposition as to real and personal property. But such difference in statutory scope does not militate against the applicable force here of the reasoning in the Fox case, based as it is on the right of a state to prescribe who can, and who cannot, take by the will of one of its residents. So significant is the case of United States v. Perkins, 163 U. S. 625, wherein the "single question" presented was
"whether *personal* property bequeathed by will to
104 the United States [was] subject to an inheritance tax under the laws of New York." (Emphasis added.) Recognizing the right to make a testamentary disposition as "purely a creature of statute and within legislative control" (page 627), and that when a state "grants" such right, it may annex "any conditions which it supposes to be required by its interests or policy" (pages

629-630), the court, following citation of the Fox case, *supra*, sustained the propriety of the tax—in "diminution" of the amount the United States would receive under the will—as it was "only upon [such] condition that the legislature assent[ed] to [the] bequest" (page 630). And as recently as 1942 the Supreme Court of the United States in Irving Trust Co. v. Day, 314 U. S. 556, wherein was sustained the validity of a section of the "New York Decedent Estate Law" concerning the right of a surviving spouse to elect to take against the provisions of a will, cited both the Fox and Perkins cases, *supra*, among others, in support of its broad statement at page 562, as follows: "Rights of succession to the property of a deceased, whether by will or by intestacy, are of statutory creation, and *the dead hand rules succession only by sufferance*. Nothing in the Federal Constitution forbids the legislature of a state to limit, condition, or even abolish the power of testamentary disposition over property within its jurisdiction." (Emphasis added.) (See, also, Allen v. Markham, 156
105 Fed. 2d 653, 659; Clark v. Allen, 331 U. S. 503, 517.)

The Government's contention that if section 27 of the Probate Code should be construed as invalidating the bequest in question, "serious constitutional questions would arise" involving an "unlawful discrimination against the United States" is effectively answered by the Irving Trust Co. case as above quoted. Likewise the attack upon the pertinency of the basic reasoning in the Fox case, *supra*, and the claim that assuming "the Fox case cannot be distinguished, it must be regarded as overruled" are without force in view of its citation as recently as 1942 by the Supreme Court as noted.

Nor does the reference in the last sentence of section 27 of the Probate Code to the testamentary capacity of a "corporation * * * expressly authorized by statute" aid the Government in its attempt to uphold the validity of the bequest in question. Whether or not the word "corporation" in such "legislative environment" would include the United States as a "governmental body" (see State of Ohio v. Helvering, 292 U. S. 360, 370; State of Georgia v. Evans, 316 U. S. 160, 161), the further requirement of the section is concededly unsatisfied in the Government's admission that through "various Federal statutes enacted from time to time have authorized particular agencies of the
106 Government to acquire property by will and to apply it to stated uses * * * no Federal statute of general ap-

plication has purported to authorize the United States to so acquire property." It is true that the capacity of the United States to "receive a voluntary devise or bequest" has been regarded as an "inherent attribute of sovereignty" and so sustained as an implied power of the federal government, but such principle has no force where there is an "express statute" of the state wherein "the testator had his domicil" effecting "a restriction as to who may be devisees or legatees." (Dickson v. United States, 12 Mass. 311, 315.) In short, the entire matter of the right of testamentary disposition appears to be one within the control of the state having jurisdiction of the property in question, and there is no constitutional requirement that the state allow the United Sates to take "under a will." (United States v. Fox, *supra*, 94 U. S. 315; United States v. Perkins, *supra*, 163 U. S. 625; Irving Trust Co. v. Day, *supra*, 314 U. S. 556.)

Nor does it strengthen the Government's position to refer to section 13841 of the Revenue and Taxation Code, which exempts "property transferred to * * * the United States" from the California inheritance tax. There is no necessary connection between a statute regulating succession to property and one setting forth tax exemp-
107 tions, and in making laws relating to these two subjects, over which it had plenary authority, the legislature was not bound to shape its respective enactments to fit any particular pattern or limit its right to impose such conditions as it deemed appropriate in the distinct fields. (*In re* Wilmerding, *supra*, 117 Cal. 281, 286-287.) There may be, for example, a transfer of property—the residue of a veteran's pension fund—to the United States under the federal escheat laws (Estate of Lindquist, 25 Cal. 2d 697, 705, cert. den. 325 U. S. 869; Estate of Walker, 25 Cal. 2d 719, 720, cert. den. 325 U. S. 869) or in pursuance of a contract whereby a veteran, prerequisite to entry into a national soldiers' home, agreed that all his personal property should pass to the board of managers of such home under certain circumstances (United States v. Stevens, 302 U. S. 623; Mauck v. United States, 94 Fed. 2d 745). But such situations do not furnish any parallel considerations negativing the force of section 27 of the Probate Code as determinative of rights of testamentary disposition of property "within [the] dominion" of this state. (United States v. Perkins, *supra*, 163 U. S. 625, 629.)

The Government finally relies on the Estate of Hendrix, 77 Cal. App. 2d 647, to sustain the bequest in question, but

an analysis of that case shows it to involve quite dissimilar considerations. There the bequest was made to the
108 "United States Veterans Administration * * * for the purpose of rendering to disabled veterans of the world war * * * such aid, comfort, [and] assistance * * * as may to them be most helpful and profitable, determinable by said * * * [organization]." (Page 649.) As the successor of "a corporation, 'The National Home for Disabled Volunteer Soldiers'" (page 652), the "Veterans' Administration" is authorized, through its "Board of Managers," to "receive donations of money or property * * * [which would] embrace gifts by means of wills, as well as by transfers during the lifetime of the donors." (Page 653.) Upon classifying the Veterans' Administration as a "governmental agency," though unincorporated, and in discussing its testamentary capacity to accept the bequest in question under the laws of California (Prob. Code, sec. 27), the court declared that "the bequest to the agency was, in effect, a bequest to the parent, United States of America" (page 651), that "the United States Government is a corporation" (page 652), that "the [agency] is authorized by statute to take property by will" (page 652), and that therefore the United States Government, functioning through one of its component parts in a designated field of operation, is a "corporation * * * expressly authorized by statute" to "take [property] under a will" within the purport of section 27 of the Probate Code. (Page 653.) But the validity of the bequest there involved need not
109. rest on that ground, for, as the court indicated in its reference to the analogous considerations prevailing in the Estate of Yule, 57 Cal. App. 2d 652, the terms of the will, as reasonably construed, provided for "a gift for charitable purposes to a legally constituted institution" (page 654), and whether or not such recipient was "incorporated" or "unincorporated" was not a material factor affecting its capacity to take the "donation" as so restricted. Accordingly, the bequest to the United States Veterans' Administration was properly deemed valid in the light of the liberal provisions of the statute evidencing the legislative purpose to favor "gifts for charitable purposes" in pursuance of "the intent of the donor" (Estate of Yule *supra*, p. 654), and the further discussion in the Hendrix case relative to the propriety of holding the "United States of America" to be a "corporation authorized to take by will pursuant to Section 27 of the Probate Code" (page 650) was unnecessary to the decision, and

certainly will not be regarded as furnishing ground for sustaining a bequest to the "United States Government," without qualification as to administration or purpose. From these underlying considerations—both factual and legal—distinguishing the essential focal point of decision, it is manifest that the Government's reliance upon the Hendrix case in nowise strengthens its position here.

110 In view of the nature of the power of testamentary disposition, the right of the state to determine the limits under which this power shall be exercised, and the express terms of section 27 of the Probate Code prescribing "who may take by will," the bequest here challenged cannot be sustained as meeting the test of the cited statute, and hence is void.

The order subject of this appeal is reversed.

SPENCE, J.

WE CONCUR:
Gibson, C. J.
Shenk, J.
Carter, J.
Schauer, J.

I CONCUR IN THE JUDGMENT:
EDMONDS, J.

111 In the Supreme Court of California

Estate of BURNISON
S. F. No. 17620

Dissenting Opinion

I dissent for the reasons set forth in Estate of Hendrix, 77 Cal. App. 2d 647, 651-653.

TRAYNOR, J.

112 In the Supreme Court of California In Bank

Estate of B[illegible]NISON

Order Denying Petition for Stay of Remittitur—Filed April 25, 1949

Petition for stay of remittitur denied.

Dated: Apr. 5, 1949.

GIBSON
Chief Justice

(File Endorsement Omitted)

113 Supreme Court of California

Clerk's Certificate to foregoing transcript omitted in printing.

114 In the Supreme Court of the United States

(Title Omitted.)

(File Endorsement Omitted)

Petition for Appeal to the Supreme Court of the United States—Filed June 21, 1949

To: The Honorable William O. Douglas, Associate Justice of the Supreme Court of the United States.

Now comes the United States of America, petitioner herein and states that on the twenty-second day of March, 1949, the Supreme Court of California entered judgment against it, holding that a bequest to it was void under Section 27 of the Probate Code of the State of California.

Petitioner, believing that the judgment of the Supreme Court of California incorrect, has applied to the Chief Justice of the Supreme Court of California for an allowance of the appeal, and it is informed that on June 14, 1949 the Chief Justice of the Supreme Court of California has refused to allow the appeal. Therefore it prays this Court that it may be allowed to appeal to the Supreme Court of the United States for reversal of the judgment of the Supreme Court of California and that a transcript
115 of the record of this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Petitioner submits and presents to the Court herewith a statement showing the basis of the jurisdiction of this Court to entertain an appeal in this case.

Dated June 15, 1949.

UNITED STATES OF AMERICA
By PHILIP B. PERLMAN
Philip B. Perlman
Solicitor General

116 In the Supreme Court of the United States

(Title Omitted)

(File Endorsement Omitted)

Assignment of Errors and Prayer for Reversal—Filed June 21, 1949.

Now comes the United States of America, respondent in the above-entitled cause, and in connection with its appeal

herein files the following assignment of errors upon which it will rely in its prosecution of said appeal to the Supreme Court of the United States from the judgment of the Supreme Court of California dated March 22, 1949. The Supreme Court of California erred:

1. In holding that Section 27 of the Probate Code of California, barring the United States from receiving testamentary gifts under wills of California domiciliaries, does not infringe the inherent sovereign power of the United States derived from the Constitution.

2. In holding that Section 27 does not effect an unconstitutional discrimination against the United States.

117 3. In holdng that there is no constitutional requirement that the state allow the United States to take under a will.

4. In holding that a state's power to control the descent of property is free from any constitutional limitation.

5. In holding that the entire matter of the right of testamentary disposition is within the control of the state having jurisdicion of the property in question.

WHEREFORE, respondent United States of America prays that said judgment of March 22, 1949 be reserved.

Dated: June 15, 1949.

PHILIP B. PERLMAN
Philip B. Perlman
Solicitor General

118 In the Supreme Court of the United States

(Title Omitted)

(File Endorsement Omitted)

Order Allowing Appeal—Filed June 21, 1949

United States of America, having prayed for an allowance of an appeal to the Supreme Court of the United States from the final judgment rendered by the Supreme Court of the State of California in the above-entitled cause and having presented and filed its petition for appeal, assignments of error and prayer for reversal and a statement as to jurisdiction on appeal, pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

It is now ordered that an appeal be and the same is hereby allowed in the above-entitled cause as provided by law,

125 Supreme Court of the United States

Order Noting Probable Jurisdiction—October 10, 1949

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

☆ U. S. GOVERNMENT PRINTING OFFICE: 859689 NO. 9....1949

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949.

No. 185

THE UNITED STATES OF AMERICA,
APPELLANT,

vs.

CHARLES F. GAFFEY, ANNIE I. HARRIS,
GEORGE E. BREECE, et al.

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED JULY 12, 1949

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949.

No. 188

THE UNITED STATES OF AMERICA,
APPELLANT,

VS.

CHARLES F. GAYETTY, ANNIE L. HARRIS, GEORGE E. BREECE, *et al.*

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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1 In the Superior Court of the State of California
in and for the County of Los Angeles

In the Matter of the Estate of
EMILY P. SANBORN, Deceased.

First and Final Account, Report, Petition for Allowance of Fees to Special Administratrix and Administratrix with the Will Annexed, and Petition for Final Distribution, and for Approval of Assignments to Attorneys—Filed July 10, 1947.

To The Honorable, The Superior Court of the State of California, in and for the County of Los Angeles:

ANNIE L. HARRIS, Administratrix with the Will Annexed of the Estate of Emily P. Sanborn, Deceased, renders to the Court her First and Final Account, Report, Petition for Allowance of fees to Special Administratrix and Administratrix with the Will Annexed, and Petition for Final Distribution and for Approval of Assignments to Attorneys, and for such Report and Petition alleges as follows, to-wit:

That said Administratrix is chargeable with items set forth in Exhibit "A" of said Administratrix's First and Final Account, hereto attached and made a part hereof, in the sum of $35,828.41

That said Administratrix is entitled to credits as set forth in Exhibit "B" of said
2 Administratrix's First and Final Account hereto attached and made a part hereof, in the sum of ..... $ 1,286.20

That said Administratrix has a balance on hand as set forth in Exhibit "C" of said Administratrix's First and Final Account, hereto attached and made a part hereof, in the sum of $34,542.21

That the above named decedent became deceased in the County of Los Angeles, State of California, on the 4th day of February, 1945, leaving as her next of kin the following named persons, with their relationship to the said decedent and the value of interest of her estate to which each is entitled, set opposite each respective name:

Name	*Relationship*	*Value of Interest of Estate*
Charles F. Gayetty	Grand-Nephew	1/4
Annie L. Harris	Niece	1/8
George E. Breece	Grand-Nephew	1/8
Ben Roy	Nephew	1/12

Name	*Relationship*	*Value of Interest of Estate*
Merle Gile	Nephew	1/20
Gertrude Barron	Niece	1/20
Margelia Gile Bernard	Grand-Niece	1/20
3 Elteen Knowles	Grand-Niece	1/48
Ralph Thibault	Grand-Nephew	1/48
Glen Thibault	Great-grand-Nephew	1/48
Angelia Nichols	Grand-Niece	1/48
Edna L. King	Grand-Niece	1/60
Ferne L. Thibideau	Grand-Niece	1/60
Leona M. Dickinson	Grand-Niece	1/60
Edith M. Dickinson	Grand-Niece	1/60
Loretta A. Dickinson	Grand-Niece	1/60
Geneva Gile Fuller	Grand-Niece	1/80
Herman Gile	Grand-Nephew	1/80
Harold Gile	Grand-Nephew	1/80
Floyd Gile	Grand-Nephew	1/80
Sherman Gile	Grand-Nephew	1/200
Earland Gile	Grand-Nephew	1/200
Rena Gile	Grand-Niece	1/200
George Gile	Grand-Nephew	1/200
Chester Gile	Grand-Nephew	1/200
La Forest Gile	Grand-Nephew	1/200
Hazel Gile Farington	Grand-Niece	1/200
Ralph Gile	Grand-Nephew	1/200
Wellington Gile	Grand-Nephew	1/200
Bernard Gile	Grand-Nephew	1/200

That the above named persons are the only heirs at law of the said decedent, she having died without living issue or a child or children or other descendants of any deceased issue.

4 That on or about the 23rd day of March, 1945, your petitioner, in her individual capacity, as an heir of said decedent entitled to succeed to a portion of said estate and as such entitled to Letters of Administration with the Will Annexed, filed with the Clerk of the above entitled court a document dated the 12th day of June, 1942, purporting to be the Last Will and Testament of said decedent and did on said day file herein a petition for the probate thereof; that Willis Sargent was named in said document as the Executor thereof but that he was on active naval duty at the time of decedent's death and was unable to act in such capacity; that he did thereafter

file herein his renunciation of said trust; that by the terms of said document the said decedent devised and bequeathed to the United States of America all of her real property and all of the United States Government Bonds, of which she died possessed; that said document will be hereafter referred to as the "Government Will"; that said petition for the probate of said Government Will did expressly state therein your petitioner's hostility to the provisions thereof insofar as the same disposed of any property of said estate to the United States of America and was filed by your petitioner for the sole and only purpose of bringing said Government will to the attention of the Court, to the end that the validity of its provisions be determined by said Court.

That on or about the 6th day of March, 1945, there was filed for probate in the above entitled court by Garland L. Brunton, a document dated the 28th day of December, 1944, claimed by him to be the Last Will and Testament of the decedent, together with a petition for probate thereof; that said document will hereafter be referred to as the "Brunton Will"; that thereafter said Brunton filed herein his contest of and opposition to the said Government Will upon the ground that said Brunton Will was the later and last will of said decedent.

That said heirs at law duly filed herein their answer to said contest and their contest and opposition to the said Brunton Will upon the grounds of testamentary incapacity, fraud, undue influence, lack of testamentary intent and that said document was not executed with the formalities required by law; that after said contests were at issue, the same were tried before the above entitled court, without a jury, in Department 2, thereof, the Honorable Harry R. Archbald, Judge Presiding, which said trial thereon took place from on or about the 18th day of October, 1945, to on or about the 30th day of October, 1945; that said court thereafter made and entered its decrees admitting said Government Will to probate and denying said Brunton Will to probate; that said decrees are now final.

That after proceedings duly had before the above entitled court, your petitioner was appointed by said court as special administratrix of said estate, with powers of a general administrator, and on or about the 18th day of April, 1945, special letters of administration with said powers were issued to your petitioner, who from said time until on or about the 1st day of April, 1947, was

the duly appointed, qualified and acting special administratrix of the said estate; that during said time, petitioner, as such special administratrix, managed the affairs of said estate and took such action and did such things as were reported by her as such special administratrix in her current and final accounts and reports as special administratrix, all of which have been approved and allowed by said court and are in file herein.

That on or about the said 1st day of April, 1947, and after proceedings duly had before said court, your petitioner was discharged by said court as special administratrix of said estate, and appointed by said court as administratrix with the will annexed of said estate, to whom on or about said date Letters of Administration with the Will Annexed were issued to your petitioner, who ever since said time has been and now is the duly appointed, qualified and acting administratrix with the will annexed of the said estate.

That an inventory and appraisement of the property and assets of said estate was heretofore filed herein, reflecting the total value of said estate to be the sum of $21,612.00; that thereafter an inventory and reappraisement of some of the property of said estate was filed herein, showing the value of said reappraised property to be $6500.00 in excess of the sum originally appraised; that the total ap-
7 praised value of said estate, including the appraised value of the property not reappraised and the value of the reappraised property, is the sum of $28,112.00.

That, as shown by the current and final accounts and reports of your petitioner, as special administratrix, and the petition for confirmation of each sale, all of which are on file herein, petitioner, as such special administratrix, sold the property of the said estate, hereafter set forth, after confirmation of each respective sale thereof, to the persons and for the amounts and for the gain thereon, as follows:

To Rose Veres the real property described in the inventory and appraisement on file herein as Parcel No. I for the sum of $5350.00, said sum being $850.00 above and beyond the re-appraised value thereof; to Rose Veres the real property described in the inventory and appraisement on file herein as Parcels No. 3 and 4 together with all household furniture and furnishings belonging to said estate, contained therein, for the sum of $11,000.00 said sum being $1185.00 above and beyond the reappraised value thereof.

That included in the assets of said estate was that certain unimproved real property described in the inventory and appraisement on file herein as Parcel No. 5; that your administratrix has maintained in effect on said property a grazing lease throughout these proceedings; that your administratrix successfully caused to be negotiated an extension of an oil and gas lease on said property under
8 terms most advantageous to said estate, which said lease was approved by the above entitled court after proceedings duly had.

That notice to creditors of said estate has been duly published as required by law and more than six months have elapsed since the first publication thereof; that all claims against said estate have been paid; that all taxes chargeable to said estate or which might be liens or charges against any of the property of said estate have been paid in full, except Inheritance Taxes chargeable to the heirs at law of said decedent; that there has been filed concurrently herewith Stipulation executed by counsel for the California State Controller and counsel for your petitioner, stipulating that this petition for final distribution may be filed and heard and determined by said court prior to the filing of the Inheritance Tax Report on said estate and the payment of Inheritance Taxes thereon, which said Stipulation is on file herein; that should the court determine that the heirs at law of said decedent are entitled to distribution of said estate, the aggregate sum of $350.00 will be due from said heirs at law for Inheritance Taxes, but should said court determine that the United States of America is entitled to distribution of the aforesaid portion of said estate, no Inheritance Taxes whatsoever will be due to the State of California; that said estate is now ready to be closed. That the United States of America claims to be entitled to have distributed to it all the United States Government
9 Bonds of the said decedent and all of her real property, or the net proceeds from such thereof as has been sold in probate, under the terms and provisions of said Government Will; that the heirs at law of said decedent claim to be, and your petitioner alleges that they are, entitled to distribution of the whole of said estate; that the United States of America is not the state contemplated by Section 27 of the Probate Code of the State of California, and the same is not a county, a municipal corporation, a natural person, or an unincorporated religious or an unincorporated benevolent or an unincorporated fraternal

society or an association, or a lodge, or a branch of any of the foregoing, and the same is not a corporation formed for religious or scientific or literary purposes, or solely for educational or hospital or sanatorium purposes, and was not formed primarily for public preservation of natural forests or natural scenery or to maintain public libraries, museums, or art galleries, or for any other similar purpose, or a corporation expressly authorized by Statute to take under a will.

That J. Frank Martin, Jr. and J. Harold Decker are attorneys at law, duly licensed to practice their profession before all of the courts of the State of California; that said attorneys were employed by the heirs at law of the said decedent to represent them in connection with said estate and all of said heirs, except Loretta A. Dickinson, Hazel Gile Farington, Ralph Gile, Wellington Gile, and
10 Bernard Gile, made, executed and delivered to said attorneys, each, a document, among other things, assigning to said attorneys an undivided thirty-five per cent (35%) interest of whatever money or property he or she might have distributed to him or her in these proceedings, and expressly authorized the court having jurisdiction of said estate to direct the distribution thereof directly to said attorneys; that true and correct copy of the form of said assignments is attached hereto and marked Exhibit "D", and the originals thereof are on file herein; that the said assignments are fair and equitable and the consideration therefore is adequate, in this; that the said Brunton Will purported to dispose of all of the property of the said decedent to Garland L. Brunton, whereby it became necessary to defend said Government Will and to protect the said estate and the heirs at law of the said decedent and the United States of America, named therein as sole legatee, from distribution of the entire estate of the decedent to the said Garland L. Brunton under what appeared to be a spurious will; that the said attorneys made all necessary investigations preliminary to the filing of the contest thereof and interviewed many witnesses in connection therewith; that they filed all necessary documents by way of opposition to said Brunton Will and personally tried the contest thereof for approximately eight days in Department 2 of the above entitled court; that all of the work which was done by said attorneys in connection therewith was done with-
11 out any assistance whatsoever from anyone interested in the estate other than the heirs at law of the

said decedent, which said heirs at law have paid all of the costs incident to the preparation and trial of said contests, which have resulted in defeating said Brunton Will and establishing said Government Will as the Last Will and Testament of said decedent; that the efforts of the said attorneys were directly responsible for the result of said litigation, to-wit; a decree of said court denying said Brunton Will to probate and a decree of said court admitting said Government Will to probate, thereby saving the whole of said estate for those legally entitled thereto; that said attorneys have received no other or additional compensation for said services nor are said heirs obligated by contract to pay any other or additional compensation.

That the only person who was appointed by the above entitled court as the legal representative of said decedent in these proceedings is your petitioner who has acted as both special administratrix and administratrix with the will annexed, as hereinabove alleged; that as such representative she has rendered to the said estate all of the ordinary services required of administrators or executors and is entitled to her statutory fee therefor in the sum of $1,076.38.

That petitioner has for distribution the following property belonging to the said estate as more fully set forth in said Exhibit "C" of said administratrix's Final Account:

Cash in the amount of $20,745.21; Government Bonds
12 in the amount of $1,144.00; Stocks in the amount of $4,608.00; Two parcels of real property, one of which is unimproved land appraised at $4,000.00 and one parcel improved with a dwelling house together with all household furniture and furnishings belonging to said estate contained therein reappraised at $4,045.00.

WHEREFORE, petitioner prays as follows, to-wit:

1. That said account be by said court settled, allowed and approved.

2. That the court make its order allowing to petitioner her statutory fee for ordinary services rendered by her as special administratrix and administratrix with the will annexed in the sum of $1,076.38.

3. That the court determine the amount due to the attorneys for said estate for both statutory and extraordinary fees and allow such amount to said attorneys therefor.

4. That the court approve the assignments of J. Frank Martin, Jr. and J. Harold Decker, hereinabove alleged, and make its order for the distribution of all of the property of said estate in the hands of your petitioner, less the

amount fixed and allowed by said court as ordinary fees to your petitioner and ordinary and extraordinary fees to said attorneys chargeable to said estate as said court may determine, together with all of the property of the said decedent which may hereafter be discovered as follows, to-wit:

To J. Frank Martin, Jr. and to J. Harold Decker—
13 33.716 per cent thereof; to Charles F. Gayetty—16.25 per cent thereof; to Annie L. Harris and George E. Breece, each, 8.125 per cent thereof; to Ben Roy—5.416 percent thereof; to Merle Gile, Gertrude Barron, and Margelia Gile Bernard, each, 3.25 per cent thereof; to Elteen Knowles, Ralph Thibault, Glen Thibault and Angelia Nichols, each, 1.354 per cent thereof; to Edna L. King, Ferne L. Thibideau, Leona M. Dickinson, and Edith M. Dickinson, each 1.083 per cent thereof; to Geneva Gile Fuller, Herman Gile, and Floyd Gile, each, .8125 percent thereof; to Sherman Gile, Earland Gile, Rena Gile, George Gile, Chester Gile, and LaForest Gile, each, .3255 per cent thereof; to Loretta Dickinson—1.667 per cent thereof; to Hazel Gile Farington, Ralph Gile, Wellington Gile, and Bernard Gile, each, .5 per cent thereof.

5. That after distribution of the said estate by petitioner pursuant to the decree of said court entered hereon, she be discharged as administratrix with the will annexed and her bond exonerated.

6. For such other and further relief as to the Court may seem proper in the premises.

ANNIE L. HARRIS
Annie L. Harris
Administratrix, with the Will Annexed
Petitioner

J. FRANK MARTIN, JR. and
J. HAROLD DECKER

By: J. HAROLD DECKER
Attorneys for Estate

14 *Exhibit "A"*

FIRST AND FINAL ACCOUNT OF ADMINISTRATRIX WITH WILL ANNEXED

Administratrix chargeable on settlement of Final Account of Special Administratrix	$34,812.61
Rents from Real Estate from February 14 to June 30, 1947	522.00
Dividends	43.80

Prorata refund of premium on bond of Special Administratrix			50.00
Profit on sale of real property described in inventory as Parcel No. I:			
Sale Price	$5350.00		
Re-appraised at	4500.00	$ 850.00	
Less deposit previously reported		535.00	315.00
Profit on sale of real property described in inventory as Parcels No. 3 and 4 together with furniture therein contained:			
Sale Price	$11,000.00		
Re-Appraised at	9,815.00	$1,185.00	
Less deposit previously reported		1,100.00	85.00
Administratrix is chargeable with			$35,828.41

15 *Exhibit "B"*

FIRST AND FINAL ACCOUNT OF ADMINISTRATRIX WITH WILL ANNEXED

Said Administratrix is entitled to credits as follows:

Costs of sale in escrow of Parcel No. I:		
Taxed, January 1, 1947 to June 13, 1947	$ 31.48	
Proration of rents	.67	
Commission to Edward J. Crowley	267.50	
Policy of Title Insurance	35.00	
Escrow costs	16.00	
Revenue Stamps	6.05	
Recording order confirming sale	1.50	$358.20
Costs of sale in escrow of Parcels No. 3 and 4:		
Taxes, January 1, 1947 to June 2, 1947	$ 67.57	
Proration of rents	50.17	
Commission to Edward J. Crowley	550.00	
Policy of Title Insurance	47.50	
Escrow costs	21.00	
Revenue stamps	12.10	
Recording order confirming sale	1.00	$749.34
Commission to Rose Kinnamon as authorized by Court		$ 33.00

16

Date	*Voucher No.*	*Payee*	
4/15/47	51	Department of Water and Power, Water service ...	$ 8.29
4/15/47	52	Frank J. Ryan Co., Premium on Administratrix bond	120.00
6/16/47	53	Department of Water and Power, Water service ...	9.92
6/16/47	54	Wilbur G. Smith, Process service	5.00
6/17/47	55	J. Frank Martin, Jr., refund for costs advanced for certified copy of order confirming sale of real property	1.10
		Bank Charges	1.35
Administratrix is entitled to total credits of			$1,286.20

17 *Exhibit "C"*

FIRST AND FINAL ACCOUNT OF ADMINISTRATRIX WITH WILL ANNEXED

Balance on hand consists of:	
Cash	$20,745.21
Real property, Parcel No. 2, inventoried at..	4,000.00
Real property, Parcel No. 5, inventoried at..	4,000.00
Household furniture and furnishings inventoried at	45.00
Stocks, inventoried at	4,608.00
United States Government Bonds, inventoried at	1,144.00
Total Balance on Hand	$34,542.21

18 *Summary*

FIRST AND FINAL ACCOUNT OF ADMINISTRATRIX WITH WILL ANNEXED

Said Administratrix is entitled to credits of ...	$ 1,286.20
Balance on hand	34,542.21
Total Credits	$35,828.41
Said administratrix is chargeable with	$35,828.41

19 *Exhibit "D"*

The undersigned, one of the heirs of my late aunt, Emily P. Sanborn, deceased, hereby appoints J. Frank Martin, Jr. and J. Harold Decker, attorneys at law, Los Angeles, California, to represent me in connection with all matters pertaining to the estate of my said aunt. I understand that in order that my interest therein be protected, appropriate legal action or actions must be taken against the United States of America and Garland L. Brunton, who will be entitled to the whole of said estate if certain documents, testamentary in character, executed by my said aunt in her lifetime, are not declared to be inoperative as Last Wills, and said action or actions prosecuted to final judgment unless sooner settled.

I hereby empower my said attorneys to take whatever legal steps are, in their sole opinion and discretion, appropriate to protect my said interest to the end that I receive from said estate as heir at law the greatest possible amount, either through litigation or settlement.

For the service of said attorneys I hereby agree to pay to them an amount equal to thirty-five per cent (35%) of all money recovered by me from said estate, either by way of judgment, distribution or settlement, and to give to them an undivided thirty-five per cent (35%) interest in and to all of my right, title and interest in and to all property, both real and personal, which I may receive, or become entitled to receive therefrom, either by way of judg-
20 ment, distribution or settlement. This agreement shall for all purposes be deemed an assignment of said money and property, and I hereby expressly authorize the probate court having jurisdiction of said estate to authorize and direct the distribution thereof directly to the said attorneys in said probate proceedings.

I hereby authorize said attorneys to compromise and settle for me and in my name and stead any and all disputes or controversies and any and all litigation that may hereafter exist between me and the said United States of America and/or Garland L. Brunton, or any other person or corporation, upon whatever terms and conditions said attorneys in their sole and absolute discretion may deem advisable, and to that end hereby authorize them to execute for me and in my name and stead and on my behalf any and all necessary stipulations, consents to judgments and agreements which shall have for all purposes the same legal effect as though I were personally present and personally executed the same.

It is estimated that the sum of Two Hundred Dollars ($200.00) will be required to defray the costs in connection with proceedings in the lower court to establish the interests of all of the heirs of the decedent, and the undersigned will forthwith advance to said attorneys his prorata share thereof, to wit the sum of $.....

Dated this day of , 1945.

Approved this day of , 1945.

.....

Heir at Law of
Emily P. Sanborn, Deceased

21 *Duly sworn to by Annie L. Harris.*
Jurat omitted in printing. (All in italics.)

22 (File Endorsement Omitted.)

23 In Superior Court of Los Angeles County

Affidavit of Posting Notice of Hearing, Final Account and Distribution and Allowance of Extra Fees Etc. and Notice of Hearing—filed July 17, 1947

State of California, }
County of Los Angeles } ss.

H. Rogers being first duly sworn, says that on July 17, 1947, at the request of the Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, he posted a notice (a copy of which notice appears on the reverse side hereof) at the courthouse in the said County of Los Angeles.

H. Rogers

Subscribed and sworn to before me this 17 day of July 1947.

J. F. Moroney
County Clerk
By H. Hudson
Deputy

Notice of Hearing

Notice is hereby given that Annie L. Harris as administratrix with will annexed of the above-entitled estate, has filed with the Clerk of this Court a petition for order settling final account and for distribution, allowing extra fees

and approving assignments to which reference is hereby made for further particulars; and that the hearing of the same has been set for August 4, 1947, at 9:30 o'clock A. M., in Department 4 of the Superior Court of the State of California, in and for the County of Los Angeles. All persons interested are hereby notified to appear at the time and place mentioned in this notice and show cause, if any they have, why the order should not be made.

J. F. MORONEY
County Clerk
By A. McLEAN
Deputy

Dated July 17, 1947.

(File Endorsement Omitted)

In the Superior Court in and for the County of Los Angeles

No. 241228

In the Matter of the Estate of
EMILY P. SANBORN, Deceased

Decree of Final Distribution and Allowance of Statutory Commissions to Administratrix—filed May 6, 1948.

The petition of Annie L. Harris, as Administratrix with the Will Annexed of the Estate of Emily P. Sanborn, Deceased, for Decree of Distribution and Allowance of Statutory Commissions to Administratrix, J. Harold Decker and J. Frank Martin, Jr., appearing as attorneys for said petitioner and for certain of the heirs at law of said deceased, and James M. Carter, United States Attorney by Clyde C. Downing, assistant United States Attorney, for the United States of America, the legatee named in the Will of said deceased, coming on regularly to be heard the 15th day of October, 1947 in Department 4 of the above entitled Court, the Honorable Harold B. Jeffery, Judge presiding, and it appearing that the United States of America having objected to the petition for distribution; and it appearing further to said court that due notice of the hearing on said petition was given as provided by law; that all inheritance taxes and all personal property taxes due and payable by said estate have been paid; that personal income taxes have been paid or secured; and that the Final account and Supplement thereto has been settled and allowed and that attorneys fees, both statutory and extraordi-

nary have heretofore been fixed and allowed and that the assignments by certain of the heirs of decedent to the attorneys for said estate have heretofore been approved:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that notice to creditors has been duly given as required by law and that the said Annie L. Harris has in her possession belonging to said estate, after deducting credits to which she is entitled, as shown by her Second Supplement to the Final Account, a balance of $20,849.03, of which $15,705.03 is in cash and the remainder consists of the property hereinafter described at the appraised value; that a portion of said estate was not disposed of by the last Will of deceased which said portion shall be distributed to the heirs at law of said deceased as hereinafter set forth; that out of the residue of cash in her hands said Administratrix retain $1,076.38 as commissions allowed by law for her services; that in pursuance of and according to the provision of the Last Will of deceased and pursuant to the order heretofore entered fixing and allowing fees to attorneys, both ordinary and extra-ordinary, the following described property, and all other property belonging to said estate whether described herein or not, be and the same hereby is distributed in the following manner:

27 To the United States of America, cash representing monies received as net income from real property and conversion values of real property sold in these proceedings in the amount of $12,689.78; United States Savings Bonds, Series E, Certificates Nos. L5228126E, Q12501095E, Q12501096E, LI6122862E, L6122861E, Q14911609E, Q14911610E, Q14911611E, Q14911612E, L6886015E, L6886016E, L8664802E, L8664801E, C13581197E, L18778357E, L18778356E, L25541058E, L25541059E, L34770404E, L34770403E, C35637031F, C44034049E, C58515954E, C58515955E, C65940052E, C65940051E; Lots Number three (3) and four (4), South Half (S½) of Northwest Quarter (NW¼) and Northeast Quarter (NE¼) of Southwest Quarter (SW¼) of Section Five (5), Township Three (3) North, Range Sixteen (16) West S. B. B. & M., and Southeast Quarter (SE¼) of Northeast Quarter (NE¼) and East Half (E½) of Southeast Quarter (SE¼) of Section Six (6), Township Three (3) North, Range Sixteen (16) West, S. B. B. & M., County of Los Angeles, State of California, subject to: (1) Oil and Gas Lease to J. H. Reavis, dated November 10, 1939 recorded August 6, 1940, in Book 17764, Page 24, Official Records of

Los Angeles County, as modified by Modification of Oil and Gas Lease dated July 31, 1943 recorded August 6, 1940 in Book 17756, Page 59, Official Records of Los Angeles County, (2) Mineral Deed of One per cent (1%) to Willis Sargent dated May 16, 1941 recorded May 19, 1941 in Book
28 18469, Page 27, Official Records of Los Angeles County; an amount equal to 92.45 per cent of all monies hereafter received as refunds of Federal and California income taxes paid by the estate.

All of the rest, residue and remainder of said estate, including cash remaining after payment of allowed charges in the approximate amount of $1,938.87 be and the same hereby is distributed to the only heirs at law of said deceased surviving at the time of her death which names and relationship to the decedent, and the proportion to be taken by each of them is as follows:

To Charles F. Gayetty, grand-nephew, one-fourth (¼) thereof, to Annie L. Harris, niece, one-eighth (⅛) thereof, to George E. Breece, grand-nephew, one-eighth (⅛) thereof, to Ben Roy, nephew, one-twelfth (1/12) thereof, to Merle Gile, nephew, one-twentieth (1/20) thereof, to Gertrude Barron, niece, one-twentieth (1/20) thereof, to Margelia Gile Bernard, grand-niece, one-twentieth (1/20) thereof, to Elteen Knowles, grand-niece, one forty-eighth (1/48) thereof, to Ralph Thibault, grand-nephew, one forty-eighth (1/48) thereof, to Glen Thibault, great-grand-nephew, one forty-eighth (1/48) thereof, to Angelia Nichols, grand-niece, one forty-eighth (1/48) thereof, to Edna L. King, grand-niece, one sixtieth (1/60) thereof, to Ferne L. Thibideau, grand-niece, one sixtieth (1/60) thereof, to
29 Leona M. Dickinson, grand-niece, one sixtieth (1/60) thereof, to Edith M. Dickinson, grand-niece, one sixtieth (1/60) thereof, to Loretta A. Dickinson, grand-niece, one sixtieth (1/60) thereof, to Geneva Gile Fuller, grand-niece, one eightieth (1/80) thereof, to Herman Gile, grand-nephew, one eightieth (1/80) thereof, to Harold Gile, grand-nephew, one eightieth (1/80) thereof, to Floyd Gile, grand-nephew, one eightieth (1/80) thereof, to Sherman Gile, grand-nephew, one two-hundredths (1/200) thereof, to Earland Gile, grand-nephew, one two-hundredths (1/200) thereof, to Rena Gile, grand-niece, one two-hundredth (1/200) thereof, to George Gile, grand-nephew, one two-hundredth (1/200) thereof, to Chester Gile, grand-nephew, one two-hundredth (1/200) thereof, to La Forest Gile, grand-nephew, one two-hundredth (1/200) thereof, to Hazel Gile Farington, grand-niece, one two-hundredth (1/200)

thereof, to Ralph Gile, grand-nephew, one two-hundredth (1/200) thereof, to Wellington Gile, grand-nephew, one two-hundredths (1/200) thereof, to Bernard Gile, grand-nephew, one two-hundredth (1/200) thereof.

Dated this 6th day of May, 1948.

HAROLD B. JEFFERY
Judge of the Superior Court

Approved as to form:
JAMES M. CARTER, *United States Attorney*
By CLYDE C. DOWNING, *Assistant U. S. Attorney*
May 6th, 1948

30 (File Endorsement Omitted)

31 In Superior Court of Los Angeles County

Last Will—filed March 23, 1945

I, EMILY P. SANBORN, of the City of Los Angeles, County of Los Angeles and State of California, being of full age, sound mind and disposing memory and not acting under menace, duress, undue influence or fraud of any person whatsoever, do hereby make, publish and declare this instrument as and for my Last Will and Testament, hereby revoking all former wills by me made, in the manner following:

All of my property and property rights which I now have and own, and of which I may die seized or possessed, is my separate property.

ITEM ONE

I am a widow, my husband having died heretofore, and I have no children, grandchildren or issue of my body; and, I leave nothing to any of my nephews and neices or to any others of my collateral heirs.

ITEM TWO

I direct the executor of this my Will, hereinafter named, or the administrator-with-the-will-annexed who may be appointed to administer my estate, shall first pay the expenses of my last illness, funeral and burial, and my just debts.

—Page one—

ITEM THREE

32 I hereby give, devise and bequeath unto the UNITED STATES OF AMERICA, all of my bonds issued by the United States Government, which stand in my name and

which I may hereafter acquire in my name, and all of the real properties and interests in real properties which I now own and of which I shall or may die seized or possessed.

ITEM FOUR

I hereby nominate and appoint my friend, WILLIS SARGENT, an attorney-at-law having offices in said City of Los Angeles, as executor of this my Will, without bond.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 12th day of June, 1942.

EMILY P. SANBORN

Emily P. Sanborn, Testatrix

The foregoing instrument, consisting of two pages, including this page, was at the date thereof by said EMILY P. SANBORN signed on this page and on the margin of the next preceding page hereof and sealed and published as and declared to us to be her last Will and Testament, in the presence of us and each of us, who, at her request and in her presence and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

WILLIAM HAZLETT residing at 1517 Fair Oaks Ave.,
South Pasadena, California

MRS. JESSIE B. HAGGERTY residing at 229 East Adams Blvd.
Los Angeles, California

—Page Two—

33 (File Endorsement Omitted)

34 In the Superior Court in and for the
County of Los Angeles

(Title omitted)

Order Admitting Will to Probate—filed Feb. 18, 1946

The matter of the contest by contestant, Garland L. Brunton, of the document offered for probate by the respondent, Annie L. Harris, entitled "Last Will", and dated the 12th day of June, 1942, having come on regularly for trial on the 18th day of October, 1945, in Department 2 of the above entitled Court, the Honorable Harry R. Archbald, Judge Presiding, said matter being tried before said Court, sitting without a jury, on the 18th, 19th, 22nd, 23rd, 24th, 25th, 26th, and 29th days of October, 1945, trial by jury having been duly waived by said parties, said contestant being represented thereat by Harry Rabwin, Esq., and said respondent being represented thereat by J. Frank Martin,

Appeal from Orders are hereby dismissed by the District Court of Appeal, Second Appellate District, State of California. Respondents to recover costs on appeal.
Dated Jan. 7, 1947. Attested Mar. 10, 1947.
Filed Mar. 11, 1947. J. F. MORONEY, *County Clerk*. Ent. by HANNAH NAIR, *Deputy*.

Jr., Esq., and J. Harold Decker, Esq., and evidence
35 both oral and documentary, having been offered and received by the Court and the Court having submitted said matter for decision on the 29th day of October, 1945; and it appearing that notice of the time and place of the hearing on the petition of the said respondent, Annie L. Harris, for the probate of said document was duly given and published as provided by law and that no one appeared to contest the same except the contestant, Garland L. Brunton, and that the citation issued by the Clerk of said Court upon said contestant's written grounds of opposition to the probate thereof was duly served and published as provided by law and that no one appeared pursuant to said citation except the respondent, Annie L. Harris; and said cause having been consolidated for trial and tried by the Court upon the stipulation of said parties with the contest by Annie L. Harris, Ben Roy, and Charles F. Gayetty of the document offered for probate by the said Garland L. Brunton entitled "Power of Attorney", dated the 28th day of December, 1944; and the Court having made and filed herein its Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, by the Court, as follows:

FIRST: That the respondent, Annie L. Harris, have judgment herein against the contestant, Garland L. Brunton, for her costs of suit incurred herein in the sum of $.....

36 SECOND: That Emily P. Sanborn died on the 4th day of February, 1945, while a resident of the County of Los Angeles, State of California, and leaving an estate in said County of Los Angeles, State of California, and that that certain document heretofore filed herein and offered for probate upon the petition of Annie L. Harris, which said document is entitled "Last Will", and dated the 12th day of June, 1942, be admitted to probate as the Last Will of the said deceased.

DATED: This 18th day of February, 1946.

HARRY R. ARCHBALD
Judge

GRM

37 (Affidavit of Service by Mail—1013a, C. C. P.)

State of California }
County of Los Angeles } ss.

J. HAROLD DECKER, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is: 628 Title Ins. Bldg., 433 S. Spring St. that on the 1st day of February, 1946 affiant served the within ORDER ADMITTING WILL TO PROBATE on the Contestant in said action, by placing a true copy thereof in an envelope addressed to the attorneys of record for said contestant at the office address of said attorney, as follows: "MARCUS, RABWIN & NASH, Attorneys at Law, 608 South Hill Street, Los Angeles, 14, California," and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, where is located the office of the attorneys for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed and there is a regular communication by mail between the place of mailing and the place so addressed.

38 J. HAROLD DECKER

Subscribed and sworn to before me this 1st day of February 1946.

(SEAL) DORIS E. SMITH
Notary Public in and for the County of Los Angeles, State of California
My Commission Expires Dec. 2, 1949
(File Endorsement Omitted)

39 In Superior Court of Los Angeles County

Letters of Administration With-Will-Annexed—filed April 1, 1947

State of California }
County of Los Angeles } ss.:

THE LAST WILL OF EMILY P. SANBORN, Deceased, having been proved in the Superior Court of the State of California, in and for the County of Los Angeles, ANNIE L. HARRIS, is hereby appointed Administratrix with-the-will-annexed.

WITNESS, J. F. MORONEY, Clerk of the Superior Court of the County of Los Angeles, with the seal of the Court affixed, the 1 day of Apr., 1947.

By order of the Court.
(SEAL) J. F. MORONEY, *County Clerk*
By MARIE MCCARTHY, *Deputy*

State of California }
County of ~~Los Angeles~~ } ss.
Sacramento

I do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of California, and that I will faithfully perform according to law the duties of Administratrix with-the-will-annexed of the Estate of EMILY P. SANBORN, Deceased.

ANNIE L. HARRIS

40 Subscribed and sworn to before me this 28 day of March 1947.

(SEAL) J W S BUTLER
Notary Public in and for the County of ~~Los Angeles~~, State of California Sacramento

(File Endorsement Omitted)

41 In Superior Court of Los Angeles County

Affidavit of Publication of Notice to Creditors and Notice to Creditors—Filed May 11, 1945

State of California }
County of Los Angeles } ss.:

G. ARTZ, of the County of Los Angles, State of California, being duly sworn, makes oath and says;

That I am, and at all times herein mentioned was a citizen of the United States of America, over the age of eighteen years and not a party to nor interested in the above entitled matter; that I am the principal clerk of the printer and publisher of

THE LOS ANGELES DAILY JOURNAL AND THE LOS ANGELES NEWS: that said newspaper is a newspaper of general circulation printed and published daily, except Sundays, in the City of and County of Los Angeles; that the Notice to Creditors in the above entitled matter of which the annexed is a

true printed copy was published in said newspaper on the following days:

April 20, 27,
May 4, 11,
All in the year 1945.
First publication April 20, 1945.

G. ARTZ

42 Subscribed and sworn to before me this 11th day of May, 1945.

(SEAL) ALICE A. HILL
Notary Public in and for said County and State

Notice to Creditors

Notice is hereby given to creditors having claims against the said decedent to file said claims in the office of the clerk of the aforesaid court or to present them to the undersigned at the office of J. HAROLD DECKER and J. FRANK MARTIN, JR., 433 So. Spring St., in the City of Los Angeles, 13, in the aforesaid County, which latter office is the place of business of the undersigned in all matters pertaining to said estate. Such claims with the necessary vouchers must be filed or presented as aforesaid within six months after the first publication of this notice.

Dated April 19, 1945.

ANNIE L. HARRIS

Special Administratrix with general powers of the Etate of said decedent.

J. HAROLD DECKER and J. FRANK MARTIN, JR., 433 So. Spring St., Los Angeles 13, Calif., Atty. for Special Administratrix.

(18104 Fri.) Apr. 20-May 11

43 (File Endorsement Omitted)

44 In the Superior Court in and for the County of Los Angeles

(Title Omitted)

Notice of Appeal—Filed June 28, 1948

To: The Clerk of the above-entitled Court, to the United States of America, Legatee under the Last Will of Emily P. Sanborn, Deceased, and to James M. Carter, United States Attorney:

YOU WILL PLEASE TAKE NOTICE that the following heirs of the above-named decedent, to wit: Charles F. Gayetty, Annie L. Harris, George E. Breece, Ben Roy, Gertrude Bar-

ron, Margelia Gile Bernard, Elteen Knowles, Ralph Thibault, Glenn Thibault, Angelia Nichols, Edna L. King, Ferne L. Thibideau, Leona M. Dickinson, Edith M. Dickinson, Geneva Gile Fuller, Herman Gile, Harold Gile, Floyd Gile, Sherman Gile, Earland Gile, Rena Gile, George Gile, Chester Gile and La Forest Gile, hereby appeal to the Supreme Court of the State of California from that portion of the Decree of Distribution entered herein in Department 4 of the above-entitled Court on the 11th day of May, 1948, which reads as follows, to wit:

"To the United States of America, cash representing monies received as net income from real property and conversion values of real property sold in these pro-
45 ceedings in the amount of $12,689.78; United States Savings Bonds, Series E. Certificate Nos. L5228126E, Q12501095E, Q12501096E, L6122862E, L6122861E, Q14911609E, Q14911610E, Q14911611E, Q14911612E, L6886015E, L6886016E, L8664802E, L8664801E, C13581197E, L18778357E, L18778356E, L25541058E, L25541059E, L34770404E, L34770403E, C35637031E, C44034049E, C5851954E. C58515955E, C65940052E, C65940051E; Lots Number three (3) and four (4), South half (S½) of Northwest Quarter (NW¼) and Northeast Quarter (NE¼) of Southwest Quarter (SW¼) of Section Five (5), Township Three (3) North, Range Sixteen (16) West, S. B. B. & M., and Southeast Quarter (SE¼) of Northeast Quarter (NE¼) and East Half (E½) of Southeast Quarter (SE¼) of Section Six (6), Township Three (3) North, Range Sixteen (16) West, S. B. B. & M., County of Los Angeles, State of California, subject to: (1) Oil and Gas Lease to J. H. Reavis, dated November 10, 1939, recorded August 6, 1940, in Book 17764, page 24, Official Records of Los Angeles County, as modified by Modification of Oil and Gas Lease dated July 31, 1940, recorded August 6, 1940, in Book 17756, page 59, Official Records of Los Angeles County, (2) Mineral Deed of One per cent (1%) to Willis Sargent dated May 16, 1941, recorded May 10, 1941, in Book 18469, Page 27, Official Records of Los Angeles County; an amount equal to 92.45 per cent of all monies hereafter received as refunds of Federal and California income taxes paid by the estate."

46 Dated: June 28, 1948.

J. Frank Martin, Jr. and
J. Harold Decker
By J. Harold Decker
Attorneys for Appellants

47 (AFFIDAVIT OF SERVICE BY MAIL—1013a, C. C. P.)

State of California }
County of Los Angeles } ss.:

M. E. BUCHANAN, being first duly sworn, says: That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business address is: 650 Subway Terminal Building, Los Angeles 13 California; that on the 28th day of June, 1948, affiant served the within NOTICE OF APPEAL on the Legatee United States of America in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said at the residence/office address of said attorney, as follows:

"James M. Carter, United States Attorney, 651 Federal Building, Los Angeles 12, California"; and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Mail at Los Angeles, California," where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed or/and there is a regular communication by mail between the place of mailing and the place so addressed.

M. E. BUCHANAN

48 Subscribed and sworn to before me this 28th day of June 1948.

(SEAL) JOYCE B. BALDWIN
Notary Public in and for the County of Los Angeles, State of California

(File Endorsement Omitted)

49 In Superior Court of Los Angeles County

Notice by Appellants to Clerk of Trial Court to Prepare Clerk's Transcript on Appeal—Filed July 8, 1948

To the Clerk of the Above Entitled Court:

Will you kindly prepare a transcript for use on appeal in the above entitled action containing the following papers:

1. Petition of Annie L. Harris for the probate of Will of the above named decedent, which said Will is dated the 12th day of June, 1942.

2. The Last Will of said decedent dated the 12th day of June, 1942.

3. The Notice of Hearing of said petition for probate of said Will.
4. Affidavit of publication of said Notice of Hearing of said petition for probate of said Will.
5. Order admitting said Will to probate.
6. Letters of Administration with the Will Annexed issued to Annie L. Harris.
7. Affidavit showing publication of Notice to Creditors.
8. Petition for Distribution.
9. Notice of Heating of Petition for Distribution.
10. Affidavit showing posting of said notice of said hearing of Petition for Distribution.
50 11. Special Notice of Hearing of Petition for Distribution.
12. Affidavit showing mailing of said Special Notice of Hearing of Petition for Distribution.
13. Decree of Distribution.

Dated: July 7, 1948.

J. HAROLD DECKER and
J. FRANK MARTIN, JR.
By J. HAROLD DECKER
Attorneys for Appellants

51 (AFFIDAVIT OF SERVICE BY MAIL—1013a, C. C. P.)

State of California }
County of Los Angeles } ss.:

M. E. BUCHANAN, being first duly sworn, says? That affiant is a citizen of the United States and a resident of the County of Los Angeles; that affiant is over the age of eighteen years and is not a party to the within and above entitled action; that affiant's business residence address is: 650 Subway Terminal Bldg., Los Angeles 13, California; that on the 8th day of July, 1948, affiant served the within NOTICE TO CLERK on the United States Attorney in said action, by placing a true copy thereof in an envelope addressed to the attorney of record for said
at the residence/office address of said attorney, as follows: "James M. Carter, United States Attorney, 600 Federal Bldg., Los Angeles, California," and by then sealing said envelope and depositing the same, with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, where is located the office of the attorney for the person by and for whom said service was made.

That there is delivery service by United States mail at the place so addressed or/and there is a regular communication by mail between the place of mailing and the place so addressed.

M. E. BUCHANAN

52 Subscribed and sworn to before me this 8th day of July 1948.

JOYCE B. BALDWIN

(Seal) *Notary Public in and for the County of Los Angeles, State of California*

(File Endorsement Omitted)

53 In Superior Court of Los Angeles County

Second Petition for Probate of Will —Filed March 23, 1945

To the Superior Court of the County of Los Angeles, State of California:

The petition of ANNIE L. HARRIS of the County of Sacramento, State of California, respectfully states:

1. That EMILY P. SANBORN died on or about the 4th day of February, 1945, at Los Angeles.

2. That said deceased at the time of her death was a resident of the County of Los Angeles, State of California, and left property in the County of Los Angeles, State of California.

3. That the character and estimated value of the property of said estate, and the probable annual income therefrom, so far as known to your petitioner, are as follows: Real property with the approximate annual income of $1600.00. Personal property, stocks, bonds, cash, etc. $6000.00.

4. That said deceased left a Will bearing date the 12th day of June, 1942, which your petitioner alleges to be the last Will of said deceased, and which is presented herewith; that a copy of said will is annexed to this petition, marked Exhibit "A".

5. That Willis Sargent named in said Will as executor thereof, declines to act as such executor and his renunciation is filed herewith.

6. That the names, ages and residences of the
54 devisees and legatees named in the said Will of deceased are as follows:

Name	*Age*	*Residence (Street and City)*
United States of America.		

7. That the names, ages and residences of the heirs at law of said deceased, so far as known to your petitioner, are as follows:

Name:	*Relationship*	*Age*	*Residence (Street and City)*
Annie L. Harris,	niece,	over 21	2542 Sacramento Blvd. Sacramento, Calif.
Ben Roy,	nephew,	over 21	611 West 9th Street Chico, California
Merle Gile,	nephew,	over 21	Fayette, Maine
Gertrude Barron,	niece,	over 21	Fayette, Maine
Charles F. Gayetty,	grand-nephew,	over 21	1920 Lockwood Ave. Los Angeles, Cal.
George E. Breece,	grand-nephew,	over 21	c/o Fox-Senator Theater Vallejo, Cal.
Edna L. King,	grand-niece,	over 21	Pherham, Maine
Loretta A. Dickinson,	grand-niece,	over 21	R. F. D. #1, Washburn, Maine
Edith M. Dickinson,	grand-niece,	over 21	R. F. D. #4, Caribou, Maine
Leona M. Dickinson,	grand-niece,	over 21	R. F. D. #1, Washburn, Maine
Ferne L. Thibideau,	grand-niece,	over 21	Perham, Maine
Angelia Nichols,	grand-niece,	over 21	Presque Isle, Maine

55

Name:	*Relationship*	*Age*	*Residence (Street and City)*
Elteen Knowles,	grand-niece,	over 21	R. F. D. #1, Mars Hill, Maine

Name:	*Relationship*	*Age*	*Residence (Street and City)*
Ralph Thibault,	grand-nephew,	over 21	6836 Hawley St., Lockwood Garden's Annex, Oakland, California.
Herman Gile,	grand-nephew,	over 21	Wayne, Maine
Geneva Gile Fuller,	grand-niece,	over 21	Mt. Vernon, Maine
Harold Gile,	grand-nephew,	over 21	Livermore Falls, Maine
Floyd Gile,	grand-nephew,	over 21	Livermore Falls, Maine
Margelia Gile Benard,	grand-niece,	over 21	Pownal, Maine
Hazel Gile Farington,	grand-niece,	over 21	Fayette, Maine
Chester Gile,	grand-nephew,	over 21	Wayne, Maine
Ralph Gile,	grand-nephew,	over 21	Fayette, Maine
George Gile,	grand-nephew,	over 21	Fayette, Maine
Laforest Gile,	grand-nephew,	over 21	Sabattiss, Maine
Wellington Gile,	grand-nephew,	over 21	North Monmouth, Maine
Bernard Gile,	grand-nephew,	over 21	North Monmouth, Maine
Sherman Gile,	grand-nephew,	over 21	156 Hanover St., Manchester, New Hampshire

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Earland Gile,	grand-nephew	over 21	301 Prospect Street Hawley, Penn.
Rena Gile,	grand-niece	over 21	73 Pine Street Lewiston, Maine
Glen Thibault,	great-grand-nephew	over 21	R. F. D. #4, Presque Isle, Maine

8. That at the time said Will was executed, to-wit, on the said 12th day of June, 1942, the testatrix was over the age of eighteen years, to-wit, of the age of 92 years, or thereabouts and was of sound and disposing mind, and not acting under duress, menace, fraud, or undue influence, and was in every respect competent, by last Will, to dispose of all her estate.

9. That said Will is in writing signed by the said testatrix and attested by two subscribing witnesses. Your petitioner alleges that said testatrix acknowledged the Will in the presence of said witnesses, present at the same time, and that said witnesses signed the said Will at the request of said testatrix and in the presence of said testatrix, and your petitioner further alleges that said witnesses, at the time of attesting the execution of said Will, were competent.

10. That said Will does not contain a residuary clause and therefore does not dispose of all of decedent's estate, to wit; certain personal property; that you petitioner is a natural heir of decedent and is therefore entitled to succeed to a portion of said estate.

57 11. That your petitioner hereby declares her hostility to Item III of said Will and further declares that at the appropriate time and by appropriate proceedings, she will object to distribution of said estate under the terms of said Item III on the ground that a testamentary disposition may not be made to the UNITED STATES OF AMERICA under the provisions of Section 27 of the Probate Code of the State of California; that this petition is presented for the purpose of placing said Will before this Court so that at the appropriate time, the validity or invalidity of said Item III thereof may be properly determined.

Wherefore, your petitioner prays that the said Will may be admitted to Probate, and that Letters of Administration with-the-will-annexed be issued to your petitioner, and that for that purpose a time be appointed for proving said Will, and that due notice thereof be given according to law, and that all necessary and proper orders may be made in the premises.

Dated: March 23, 1945.

ANNIE L. HARRIS

(File Endorsement Omitted)

In Superior Court of Los Angeles County

Affidavit of Publication of Notice of Hearing of Petition for Probate of Will and Notice of Hearing—Filed April 6, 1945

State of California }
County of Los Angeles } ss.:

G. ARTZ, of the County of Los Angeles, State of California, being duly sworn, makes oath and says;

That I am, and at all times herein mentioned was a citizen of the United States of America, over the age of eighteen years and not a party to nor interested in the above entitled matter; that I am the principal clerk of the printer and publisher of

THE LOS ANGELES DAILY JOURNAL
AND THE LOS ANGELES NEWS;

that said newspaper is a newspaper of general circulation printed and published daily, except Sundays, in the City of and County of Los Angeles; that the NOTICE OF HEARING OF PETITION FOR PROBATE OF WILL, of which the annexed is a true printed copy was published in said newspaper on the following days:

March 27, 28, 29, 30, 31,
April 2, 3, 4, 5, 6,
All in the year 1945.

G. ARTZ

Subscribed and sworn to before me this 6th day of April, 1945.

ALICE A. HILL
Notary Public in and for said County and State

(Seal)

Notice of Hearing

Notice is hereby given that the petition of Annie L. Harris, for the Probate of the Will of the above-named deceased, and for the issuance of Letters of Administration with Will Annexed thereon to the petitioner, will be heard at 9:30 o'clock A. M., on April 9, 1945, at the court room of Department 24, of the Superior Court of the State of California, in and for the County of Los Angeles.

Dated: March 23, 1945.

J. F. MORONEY
County Clerk
By H. L. DOYLE
Deputy

J. HAROLD DECKER and J. FRANK MARTIN, JR.
433 South Spring Street, Los Angeles, Calif.
Attorneys for Petitioner
(16345) Mar. 27 Apr. 6

(File Endorsement Omitted)

61 In Superior Court of Los Angeles County

Affidavit of Service of Notice of Time for Probate of Will, Etc., by Mailing and Notice of Hearing of Petition for Probate of Will—Filed March 28, 1945

State of California }
County of Los Angeles } ss.:

G. ARTZ, being duly sworn, deposes and says: that the business address of affiant is 121 North Broadway, in the City of Los Angeles, in the County of Los Angeles, State of California; that she was, at the time of the services hereinafter referred to, a citizen of the United States, a resident of the County where the mailing herein referred to occurred, over the age of eighteen years and not interested in the above estate; that on the 27 day of March, 1945 affiant deposited in the United States Mail in said City, in separate envelopes, a true copy of the notice attached hereto, of the time and place appointed for the hearing of the petition for the probate of the will of the aforesaid decedent; that said envelopes were addressed as follows:

United States of America	Washington, D. C.
Annie L. Harris	2542 Sacramento Blvd. Sacramento, California
Ben Roy	611 West 9th Street Chico, California
Merle Gile	Fayette, Maine

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Gertrude Barron	Fayette, Maine
Charles F. Gayetty	1920 Lockwood Ave. Los Angeles, California
George E. Breece	c/o Fox-Senator Theater Vallejo, California
Edna L. King	Perham, Maine
Loretta A. Dickinson	R.F.D. #1 Washburn, Maine
Edith M. Dickinson	R.F.D. #4 Caribou, Maine
Leona M. Dickinson	R.F.D. #1 Washburn, Maine
Ferne L. Thibideau	Perham, Maine

Angelia Nichols	Presque Isle, Maine
Elteen Knowles	R.F.D. #1 Mars Hill, Maine
Ralph Thibault	6836 Hawley St. Lockwood Garden's Annex Oakland, California
Herman Gile	Wayne, Maine
Geneva Gile Fuller	Mt. Vernon, Maine
Harold Gile	Livermore Falls, Maine
Floyd Gile	Livermore Falls, Maine
Margelia Gile Benard	Pownal, Maine
Hazel Gile Farington	Fayette, Maine
Chester Gile	Wayne, Maine
Ralph Gile	Fayette, Maine
George Gile	Fayette, Maine
Laforest Gile	Sabattiss, Maine
Wellington Gile	North Monmouth, Maine

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Bernard Gile	North Monmouth, Maine
Sherman Gile	156 Hanover St. Manchester, New Hampshire
Earland Gile	301 Prospect St. Hawley, Pennsylvania
Rena Gile	73 Pine St., Lewiston, Maine
Glen Thibault	R.F.D. #4 Presque Isle, Maine

that each of said envelopes was sealed and deposited in the mail with the postage thereon fully prepaid; that at the time of deposit of the aforesaid envelopes addressed to places within the United States, its Territories, Possessions, Military and Naval Bases, there was delivery service by United States mail at the places so addressed; that at the time of deposit of the aforesaid envelopes addressed to all other places, there was regular communication by mail between said place of mailing and all said other places.

G. ARTZ

Subscribed and sworn to before me, this 27 day of March, 1945.

ALICE A. HILL

(Seal) *Notary Public in and for the County of Los Angeles, State of California*

64 (File Endorsement Omitted)

65 Clerk's Certificate to foregoing transcript omitted in printing

67 In Superior Court of Los Angeles County

Stipulation as to Record

WE HEREBY STIPULATE the foregoing certified record consisting of pages 1 to 64 inclusive, to be a full true and fair transcript, and that the papers in the said transcript are the papers, and all of the papers, used or considered in the determination of the matter appealed from herein.

Dated:

_____
Attorney for Appellant

_____
Attorney for Respondent

68 In the Superior Court of Los Angeles County

Judge's Certificate

I HEREBY CERTIFY the foregoing certified record consisting of pages 1 to 64 inclusive, to be a full, true and fair transcript, and that the papers in the said transcript are the papers, and all of the papers, used or considered on the hearing at the trial of the within cause in the determination of the judgment appealed from herein; and the same is hereby settled and allowed this 21 day of October, 1948.

S/ HAROLD B. JEFFERY
Judge of the Superior Court

69 *Clerk's Certificate*

No. 241228

State of California }
County of Los Angeles } ss.:

Notice of completion of the Clerk's Transcript on Appeal of the within proceeding having been mailed to the attorneys representing the appellant and the respondent, and no request for correction of the transcript on appeal having been filed, and the time for said filing having expired: Pursuant to Rule 8 (a) of the Rules on Appeal, I HEREBY CERTIFY the foregoing record consisting of 64 pages to be a full, true and fair transcript on appeal.

Dated:

EARL LIPPOLD, *County Clerk*
By_____*Deputy*

70 In Supreme Court of California

Order of Consolidation—Dec. 7, 1948

The following is a portion of the minutes of the Supreme Court of the State of California on December 7, 1948, at San Francisco:

"S. F. 17620—Estate of Burnison
L. A. 20816—Estate of Sanborn
Causes called and consolidated for purposes of argument.

* * * * * * * * * * *"

70-A In the Supreme Court of California

In Bank

L. A. No. 20816

(File Endorsement Omitted)

In the Matter of the Estate
of
EMILY P. SANBORN, Deceased.

ANNIE L. HARRIS,
PETITIONER AND APPELLANT,
CHARLES F. GAYETTY, GEORGE E. BREECE, BEN ROY, MERLE GILE, GERTRUDE BARRON, MARGELIA GILE BERNARD, ELTEEN KNOWLES, RALPH THIBAULT, GLEN THIBAULT, ANGELIA NICHOLS, EDNA L. KING, FERN L. THIBIDEAU, LEON M. DICKINSON, EDITH M. DICKINSON, GENEVA GILE FULLER, HERMAN GILE, HAROLD GILE, FLOYD GILE, SHERMAN GILE, ERLAND GILE, RENA GILE, GEORGE GILE, CHESTER GILE and LAFOREST GILE,
HEIRS AT LAW AND APPELLANTS,
VS.
UNITED STATES OF AMERICA,
CONTESTANT AND RESPONDENT.

Opinion—Filed March 22, 1949

Testatrix, a resident of Los Angeles, devised and bequeathed to the "United States of America" all her real property in this state and her Government bonds. The will contains no residuary clause so that in the event of the failure of such devise and bequest, such property would descend to the decedent's heirs at law under
71 the laws of succession. In the probate proceedings, the court ordered distribution of the mentioned

property in pursuance of the terms of the will. From the portions of the decree of final distribution accordingly entered in favor of the "United States of America," the heirs bring this appeal.

The only question here presented is whether the challenged testamentary disposition to the "United States of America" is valid under the laws of this state. The parties advance the same opposing contentions in relation to the construction of section 27 of the Probate Code, prescribing "who may take by will," as were considered and resolved in a like situation prevailing in the Estate of Burnison, this day decided, ante p. 33. The only additional point here made relates to the pertinency of the Government's reference to two specific federal statutes as establishing the "authority of the United States to take by will." One is the Act of April 3, 1945 (59 Stats. 48, c. 51, sec. 4; 31 U. S. C. A. sec. 757), declaring that "the Treasurer of the United States * * * shall effect redemption" of "any direct obligation of the United States" (such as Government bonds) that "is bequeathed by will to the United States"; and the other is the Act of March 3, 1903 (32 Stats. 1112, c. 1007, sec. 1; 40 U. S. C. A. sec. 304), authorizing "the Secretary of the Treasury * * * to sell such lands as have been or may hereafter be acquired by
72 the United States by devise." However, such Congressional enactments, by their provision for the Government's disposition of such testamentary gifts, can be regarded as no more than implied recognition of the power of the United States to take property by will, but only where such act would be in accordance with the law of the state governing the right to make the testamentary disposition in question. Certainly such federal statutes cannot validate a "devise" or "bequest" of property in this state made by a California resident contrary to our statutory law. (Estate of Burnison, *supra.*) Accordingly the objections of the heirs to the claims of the "United States of America" under the terms of the decedent's will must be sustained.

The portions of the decree here subject of appeal are reversed.

SPENCE, J.

WE CONCUR:
Gibson, C. J.
Shenk, J.
Carter, J.
Schauer, J.

I CONCUR IN THE JUDGMENT:
Edmonds, J.

I DISSENT:
Traynor, J.

73 In the Supreme Court of California

In Bank

Estate of SANBORN

Order Denying Petition for Stay of Remittitur—Filed April 25, 1949

Petition for stay of remittitur denied.

Dated: Apr. 25, 1949.

GIBSON
Chief Justice.

(File Endorsement Omitted)

74 Clerk's Certificate to foregoing transcript omitted in printing.

75 In the Supreme Court of the United States

(Title Omitted)

(File Endorsement Omitted)

Petition for Appeal to the Supreme Court of the United States—Filed June 21, 1949

To: The Honorable William O. Douglas, Associate Justice of the Supreme Court of the United States.

Now comes the United States of America, petitioner herein and states that on the twenty-second day of March, 1949, the Supreme Court of California entered judgment against it, holding that a bequest to it was void under Section 27 of the Probate Code of the State of California.

Petitioner, believing that the judgment of the Supreme Court of California incorrect, has applied to the Chief Justice of the Supreme Court of California for an allowance of the appeal, and it is informed that on June 14, 1949 the Chief Justice of the Supreme Court of California has refused to allow the appeal. Therefore it prays this
76 Court that it may be allowed to appeal to the Supreme Court of the United States for reversal of the judgment of the Supreme Court of California and that a transcript of the record of this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Petitioner submits and presents to the Court herewith a statement showing the basis of the jurisdiction of this Court to entertain an appeal in this case.

Dated June 15, 1949.

UNITED STATES OF AMERICA
By PHILIP B. PERLMAN
Philip B. Perlman
Solicitor General

77 In the Supreme Court of the United States

(Title Omitted)

(File Endorsement Omitted)

Assignment of Errors and Prayer for Reversal—Filed June 21, 1949

Now comes the United States of America, respondent in the above-entitled cause, and in connection with its appeal herein files the following assignment of errors upon which it will rely in its prosecution of said appeal to the Supreme Court of the United States from the judgment of the Supreme Court of California dated March 22, 1949. The Supreme Court of California erred:

1. In holding that Section 27 of the Probate Code of California, barring the United States from receiving testamentary gifts under wills of California domiciliaries, does not infringe the inherent sovereign power of the United States derived from the Constitution.

78 2. In holding that Section 27 does not effect an unconstitutional discrimination against the United States.

3. In holding that there is no constitutional requirement that the state allow the United States to take under a will.

4. In holding that a state's power to control the descent of property is free from any constitutional limitation.

5. In holding that the entire matter of the right of testamentary disposition is within the control of the state having jurisdiction of the property in question.

WHEREFORE, respondent United States of America prays that said judgment of March 22, 1949 be reversed.

Dated: June 15, 1949.

PHILIP B. PERLMAN
Philip B. Perlman
Solicitor General

79 In the Supreme Court of the United States

(Title Omitted)

Order Allowing Appeal—Filed June 21, 1949

United States of America, having prayed for an allowance of an appeal to the Supreme Court of the United States from the final judgment rendered by the Supreme Court of the State of California in the above-entitled cause and having presented and filed its petition for appeal, assignments of error and prayer for reversal and a statement as to jurisdiction on appeal, pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided,

It is now ordered that an appeal be and the same is hereby allowed in the above-entitled cause as provided by law, from the Supreme Court of California to the Supreme Court of the United States; and

80 It is further ordered that the Clerk of the Supreme Court of California prepare and certify a transcript of the record in this cause, as may be designated by the appellant and appellees, and transmit the same to the Supreme Court of the United States so that the Clerk of said Court shall have said record within sixty days from this date.

Dated: June 16, 1949.

FRED M. VINSON

Chief Justice of the United States

81 Citation in usual form, filed June 21, 1949, omitted in printing.

83 In the Supreme Court of California

In Bank

(Title Omitted)

(File Endorsement Omitted)

Praecipe for Transcript of Record—Filed June 21, 1949

To the Clerk of the Supreme Court of the State of California.

Sir:

You are hereby requested to prepare a transcript of the record to be filed in the Supreme Court of the United States pursuant to an appeal allowed in the above-entitled cause, and to include in such transcript of record the following:

1. Clerk's transcript on appeal as filed in the Supreme Court of the State of California.
2. Proceedings in the Supreme Court of the State of California.
3. Petition for appeal.
4. Assignments of errors and prayer for reversal.
84 5. Statement of jurisdiction on appeal.
6. Order allowing appeal.
7. Citation on appeal.
8. Appellant's notice of appeal and statement directing appellees' attention to paragraph 3, rule 12, Rules of the Supreme Court of the United States.
9. This praecipe.
10. Appellees' acknowledgment of service of preceding documents designated as numbers 3 to 9 inclusive.
11. All statements and motions required and permitted to be filed under rule 12 of the Rules of the Supreme Court of the United States.

Dated: June 16, 1949.

PHILIP B. PERLMAN
Philip B. Perlman
Solicitor General

85 In the Supreme Court of the United States

Statement of Points Relied Upon and Designation of Record for Printing—Filed Oct. 11, 1949

Pursuant to Rule 13, paragraph 9 of this Court, the appellant states that it intends to rely on all of the points in its assignment of errors.

The appellant deems the entire record as designated in its praecipe for transcript of record heretofore filed in the Supreme Court of the State of California necessary for the consideration of the points relied upon.

THE UNITED STATES OF AMERICA
PHILIP B. PERLMAN
Solicitor General

City of Washington,
District of Columbia, ss.

VIOLA A. BARTZ, being duly sworn, deposes and says that there has this day been transmitted by registered letter to J. Harold Decker, attorney of record for the appellees in the above entitled cause, copies of appellant's Statement of

Points Relied Upon and Designation of Record for Printing, this day duly filed with the Clerk of this Court.

VIOLA A. BARTZ

Subscribed and sworn to before me this 10th day of October 1949.

GLADYS E. McGAFFEY
Notary Public, D. C.

(Seal)

86 Supreme Court of the United States

Order Noting Probable Jurisdiction—October 10, 1949

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

☆ U. S. GOVERNMENT PRINTING OFFICE: 850888 NO. 10—1949